

No. 14848

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United States  
Court of Appeals  
for the Ninth Circuit

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CHESTER GUTH, Appellant,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court for the District  
of Montana, Great Falls Division

FILED

NOV - 1 1955

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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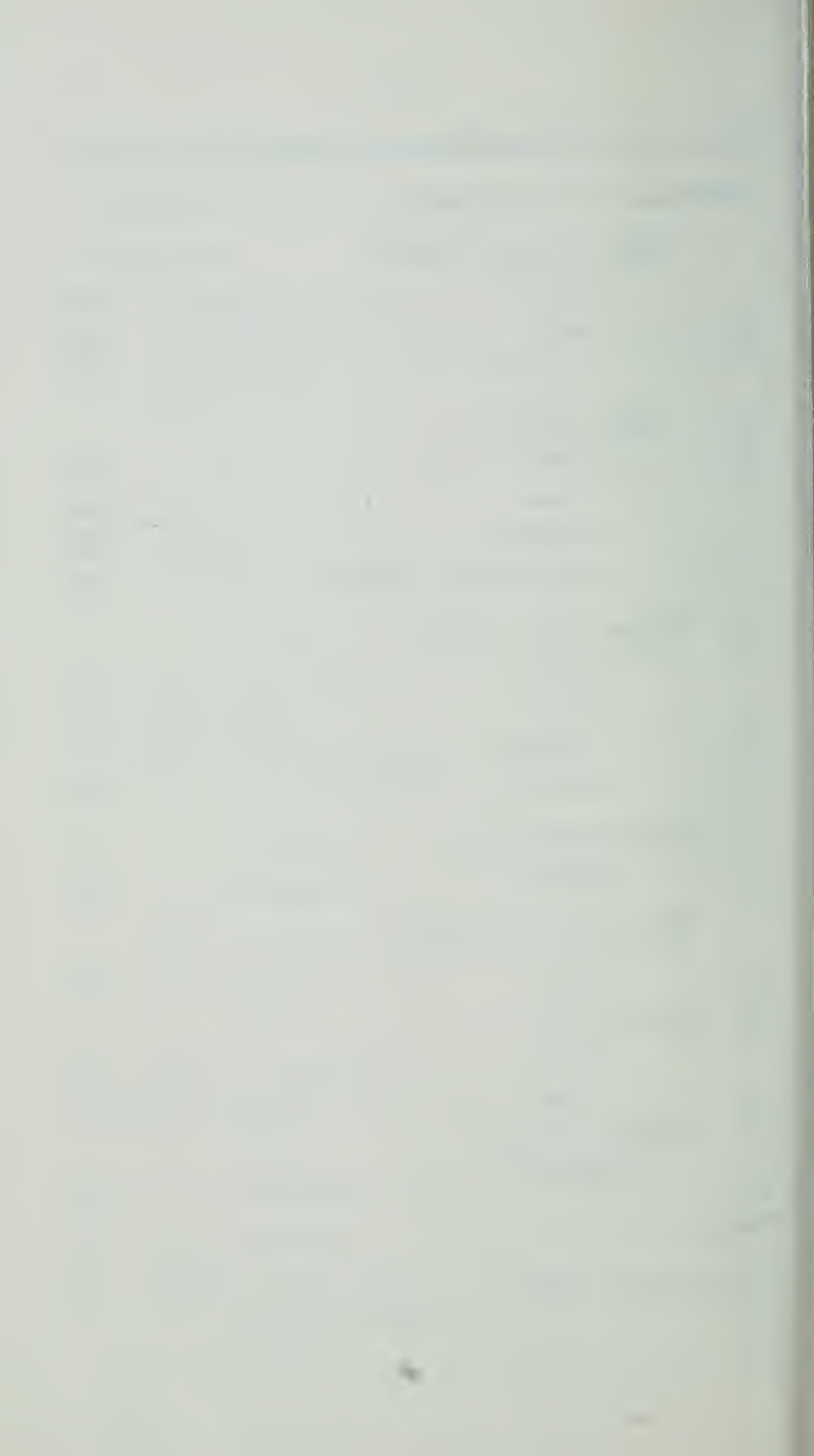
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## NAMES AND ADDRESSES OF ATTORNEYS

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Great Falls, Montana,

Attorney for Defendant-Appellant.



In the United States District Court for the District  
of Montana, Great Falls Division

Criminal No. 8503

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER GUITH,

Defendant.

### INDICTMENT

The Grand Jury Charges:

Count I.

(18 U.S.C. 1152) (R.C.M. 94-4101)

That on or about the 9th day of January, 1954, at the Guith ranch, approximately ten miles West of the City of Cut Bank, and at a place within the exterior boundaries of the Blackfeet Indian Reservation, being Indian Country, and within the State and District of Montana, the defendant, Chester Guith, did willfully, unlawfully, and feloniously have sexual intercourse with one Eleanora Gobert, a female Indian person of the age of fifteen (15) years and not at said time the wife of said defendant.

A True Bill:

/s/ HARRY A. MANSFIELD,  
Grand Jury Foreman

/s/ KREST CYR,  
United States Attorney

[Endorsed]: Filed November 9, 1954.

[Title of District Court and Cause.]

## WARRANT FOR ARREST OF DEFENDANT

To any United States Marshal or any other authorized officer:

You are hereby commanded to arrest Chester Guith and bring him forthwith before the District Court of the United States for the District of Montana in the city of Great Falls to answer to an Indictment charging him with having unlawful sexual intercourse with a female Indian person not at said time his wife, on the Blackfeet Indian Reservation on January 9, 1954, in violation of Title 18, Section 1152, USC, and R.C.M. 94-4101.

November 12, 1954.

[Seal]

H. H. WALKER,

Clerk

/s/ By ELIZABETH C. McKEE,

Deputy Clerk

Bail Fixed at \$2,500.00, returnable first day next term at Great Falls, Montana.

Marshal's Return attached.

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[Title of District Court and Cause.]

## MINUTES OF THE COURT

Defendant was duly called for arraignment, plea and trial this day, said defendant being personally present in court with his attorney, Mr. Jerry J. O'Connell, and Messrs. Michael J. O'Connell and Frank M. Kerr, Assistants to the United States



Attorney, being present and appearing for the United States.

Thereupon the defendant was duly arraigned and answered that his true name is Chester Guith, whereupon the indictment was read to the defendant. Thereupon the defendant entered a plea of not guilty, whereupon counsel for the respective parties announced that they are ready for trial.

Thereupon the following persons were duly impanelled, accepted and sworn as a jury to try the cause, viz:

John Waggoner, Julius E. Nygard, Fred T. Saylor, Leo E. Ogle, Adolph Einan, R. L. Adolphson, Hazel Ingels, John J. Ferda, Rose E. Samson, John L. Poore, William J. Toy and Ralph W. Schell.

Thereupon R. E. Miles, Eleanora Gobbert, H. C. Davis and Dr. Edward L. King were sworn and examined as witnesses for the United States, and a certain X-Ray film, marked Plaintiff's Exhibit No. 1, was offered and received in evidence, over the objection of counsel for the defendant.

Thereupon Gene P. Fopp and Edward M. Gobert No. 2 were sworn and examined as witnesses for the United States, whereupon the United States rested.

Thereupon the jury was duly admonished by the Court and excused until 10:00 a.m. tomorrow, and further trial of the cause was ordered continued until that time.

Entered in open Court at Great Falls, Montana, June 9, 1955.

H. H. WALKER,  
Clerk

[Title of District Court and Cause.]

### VERDICT

We, the jury in the above-entitled cause, find the defendant guilty in manner and form as charged in the Indictment on file herein.

/s/ R. L. ADOLPHSON,  
Foreman

We recommend leniency.

[Endorsed]: Filed June 11, 1955.

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In the District Court of the United States, District  
of Montana, Great Falls Division

Criminal No. 8503

UNITED STATES OF AMERICA,  
vs.  
CHESTER GUTH

### JUDGMENT AND COMMITMENT

On this 11th day of June, 1955, came the United States Attorney, and the defendant appearing in proper person and by his counsel, Mr. Jerry J. O'Connell.

And the defendant having been convicted on the verdict of guilty of the offense charged in the Indictment in the above entitled cause, to-wit: that on or about the 9th day of January, 1954, at the Guith ranch, approximately ten miles West of the City of Cut Bank, and at a place within the exterior boundaries of the Blackfeet Indian Reservation, being

Indian Country, and within the State and District of Montana, the defendant, Chester Guith, did wilfully, unlawfully, and feloniously have sexual intercourse with one Eleanora Gobert, a female Indian person of the age of fifteen (15) years and not at said time the wife of said defendant.

And the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is By the Court Ordered and Adjudged that the said defendant having been found guilty of said offense, be committed to the custody of the Attorney General of the United States, or his authorized representative, for imprisonment for the term of Six Years.

It is further ordered that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the same shall serve as the Commitment herein.

/s/ CHARLES N. PRAY,  
Judge

[Endorsed]: Filed and entered June 11, 1955.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of appellant: Chester Guith, Box No. 1, Cut Bank, Montana.

Name and Address of appellant's attorney: Jerry J. O'Connell, 305 Barber-Lydiard Building, Great Falls, Montana.

Offense: The appellant was convicted of the crime of statutory rape in that he had sexual intercourse with a female Indian person of the age of fifteen (15) years, and not at said time the wife of said defendant.

A judgment on the verdict of Guilty was made and entered on the 11th day of June, 1955, in the above entitled Court, sentencing the defendant to serve six (6) years in an institution of the penitentiary type.

The defendant is now confined in the Cascade County, Montana, jail, situated at Great Falls, Montana.

I, the above named appellant, by and through my attorney of record, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

Dated this 13th day of June, 1955.

/s/ JERRY J. O'CONNELL,  
Attorney for the Appellant

[Endorsed]: Filed June 13, 1955.

[Title of District Court and Cause.]

## STATEMENT OF POINTS

The appellant in the above entitled action sets forth the following points on which he intends to rely on his appeal to the United States Court of Appeals for the Ninth Circuit:

The trial Court erred as follows:

1. In denying appellant's objection to the trial of the aforesaid action under Sections 18 U.S.C. 1152, R.C.M. 94-4101, which said trial should have been under the provisions of 18 U.S.C. 2032;

2. In admitting appellee's exhibit No. 1, in that said exhibit was irrelevant, immaterial and incompetent and no foundation had been laid to connect said exhibit with the appellant;

3. In denying appellant's motion to strike all of the testimony of the witness, Dr. Edward L. King, in that said testimony was irrelevant and immaterial and no foundation was laid to connect it with the appellant herein;

4. In denying appellant's motion for a judgment of acquittal on the grounds that the Government had failed to prove that the Guith ranch, at which the crime was allegedly committed, was in Indian country as alleged in the Indictment, so that the Court had no jurisdiction of the offense alleged herein, and on the further ground that the Government had failed to prove the crime charged in the Indictment in that there was no proof of penetration of the female sexual organ of the alleged victim;



5. In refusing to admit into evidence appellant's proposed exhibit No. 2;

6. In refusing to admit into evidence appellant's proposed exhibit No. 3;

7. In refusing to admit into evidence appellant's proposed exhibit No. 4;

8. In denying appellant's objection to the admission of the testimony of the witness Fopp relative to the alleged confession of the appellant, there being no proper foundation laid for the admission thereof;

9. In denying appellant's motion for a judgment of acquittal at the close of the trial on the grounds of lack of jurisdiction of the Court because of failure to prove that the alleged crime was committed in Indian country, and on the further ground that there was no proof of penetration of the female sexual organ, and that the evidence was insufficient to support a conviction under the Indictment;

10. In instructing the jury that the Guith ranch, where the alleged offense was committed, was within Indian country, the evidence showing that said ranch was held by deed by the appellant herein without reservation of any kind or nature by the United States;

11. In instructing the jury that Title 18 U.S.C. 2032 was applicable to the case after the entire trial had proceeded under Title 18 U.S.C. section 1152, R.C.M. 94-4101;

12. In instructing the jury that section 7, subdivision 3, Title 18 U.S.C. applied to this case, the crime not having been committed on lands reserved

or acquired by the United States or under the exclusive or concurrent jurisdiction thereof or in any other manner under said subsection.

13. As further error, the appellant cites that the verdict of the jury and the judgment of conviction and sentence is not supported by the law and the evidence adduced in the case.

/s/ JERRY J. O'CONNELL,  
Attorney for Appellant

[Endorsed]: Filed June 28, 1955.

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[Title of District Court and Cause.]

### DESIGNATION OF RECORD

To the Honorable H. H. Walker, Clerk of the  
United States District Court for the District  
of Montana, Great Falls Division:

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit with reference to the Notice of Appeal filed by the appellant in the above entitled cause, transcript of the record in the above cause prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to-wit:

1. The Indictment returned by the Grand Jury and heretofore filed, charging the appellant herein with having violated 18 U.S.C. 1152, R.C.M. 94-4101, in that he had sexual intercourse with a

female Indian person of the age of fifteen years and not at said time the wife of said appellant, said offense allegedly having taken place in Indian country;

2. The plea of not guilty to the Indictment made and entered on June 9, 1955;

3. The judgment and sentence of the Court on the verdict of guilty made and entered on June 11, 1955;

4. Defendant-appellant's exhibits numbers 1, 2, 3 and 4;

5. A copy of the official reporter's transcript of the evidence and proceedings in the trial in the District Court on June 9, 10 and 11, 1955, including the instructions of said Court to the jury and appellant's exceptions thereto;

6. Notice of Appeal to the United States Court of Appeals for the Ninth Circuit filed with the Clerk of the above entitled Court on June 13, 1955;

7. This designation of record;

8. Appellant's statements of points to be relied upon on said appeal.

Dated at Great Falls, Montana, this 28th day of June, 1955.

/s/ JERRY J. O'CONNELL,  
Attorney for Appellant

[Endorsed]: Filed June 28, 1955.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,  
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify that the annexed papers, to-wit: Indictment, Verdict, Judgment and Commitment, Notice of Appeal, Designation of Record, Appellant's Statement of Points to be relied upon on appeal, are the original papers filed in Case Number 8503, United States of America, Plaintiff, vs. Chester Guith, Defendant, and designated by the appellant as the record on appeal in said cause; and that the minute record of the plea of not guilty by said defendant is a true copy of the minutes of the Court in said cause.

I further certify that I transmit herewith, as a part of the record on appeal, the Reporter's Transcript of Record filed on July 12, 1955, and the exhibits called for in the designation, to-wit: Plaintiff's Exhibit No. 1, Defendant's Exhibit No. 2, which were admitted in evidence, and Defendant's Exhibit No. 3, Defendant's Exhibit No. 4, which were not admitted in evidence.

Witness my hand and the seal of said Court at

Great Falls, Montana, this 15th day of July, A. D. 1955.

[Seal]

H. H. WALKER,  
Clerk as aforesaid

/s/ By C. G. KEGEL,  
Deputy Clerk

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In the District Court of the United States, District  
of Montana, Great Falls Division

Criminal Cause No. 8503

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER GUTH,

Defendant.

### TRANSCRIPT OF PROCEEDINGS

Before: Honorable Charles N. Pray, United States District Judge, with Jury, Great Falls, Montana, June 9, 10 and 11, 1955.

Appearances: Mr. Michael O'Connell, Assistant U. S. Attorney, Mr. Frank Kerr, Assistant U. S. Attorney, Butte, Montana, for Plaintiff. Mr. Jerry J. O'Connell, Attorney at law, 305 Barber-Lydiard Bldg., Great Falls, Montana, for Defendant. [1\*]

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\* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

The above-entitled matter came on regularly for hearing in the United States District Court in and for the District of Montana, Great Falls Division, on June 9, 10 and 11, 1955, before the Honorable Charles N. Pray, Judge presiding, with a jury.

Whereupon the following proceedings were had and done-to-wit:

The Court: We have a case set for this morning at 11:00 o'clock. I believe the order of procedure now would be arraignment and plea. You may arraign the defendant.

The Clerk: United States vs Chester Guith for arraignment, plea and trial.

The Clerk: Chester Guith, is that your true name?

Defendant Guith: Yes, sir.

Whereupon the Clerk read the indictment to the defendant.

The Court: Are you ready to enter your plea now?

Mr. J. J. O'Connell: Yes, your Honor, we are ready.

The Court: Very well, what is your plea?

Mr. J. J. O'Connell: Not guilty.

The Court: Are there any preliminary motions?

Mr. J. J. O'Connell: No, we don't have any, your Honor.

The Court: Very well. And the Government they are [4] ready for trial?

Mr. M. O'Connell: Yes, your Honor.

The Court: And the defendant is ready for trial?

Mr. J. J. O'Connell: Yes, your Honor.

The Court: Very well, call a jury.

The jury was then duly empanelled and sworn.

The Court: You may proceed with your statement to the jury.

Mr. M. O'Connell made an opening statement of the case.

The Court: You desire to save your statement.

Mr. J. J. O'Connell: Your Honor, I would like to reserve the statement for the defense until the time of the opening of our case.

The Court: Very well.

The Court: Call your first witness.

Mr. M. O'Connell: Mr. R. E. Miles.

### R. E. MILES

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. M. O'Connell): Would you please tell the court and jury your name and occupation? [5]

A. R. E. Miles, Administrative Officer, Blackfeet Indian Agency, Browning, Montana.

Q. Mr. Miles, as part of your occupation do you keep the rolls for the Indian Reservation?

A. Administratively I do, yes, sir.

Q. And do those rolls reflect all Indians enrolled in the tribe?

A. To December 31, 1939 in this one and then we use a card system from there on.

Q. Are those records kept in the regular course

(Testimony of R. E. Miles.)

of business in the conducting of affairs of the Indian Bureau?      A. They are.

Q. Those are official records?

A. They are.

Q. Are they official records required to be kept by the United States Government?      A. Yes.

Q. Are you the custodian of those records?

A. I am as administrative officer.

Q. You are the custodian and I ask you to refer to your records, your rolls and see if you find therein the name Eleanora Gobert?      A. I do.

Q. Is she listed as an Indian?

A. She is 11/16th Blackfeet. [6]

Q. 11/16th?      A. Yes.

Q. And is there any information as to her birth date?      A. August 14, 1938.

Q. Would you repeat that?

A. August 14, 1938.

Q. Do those records reflect who her parents might be?      A. They do.

Q. Who are the parents?

A. Edward M. Gobert.

Q. Is he an Indian, enrolled Indian?

A. He is allotment number 656.

Q. And is he a full blood?

A. He is 5/8ths.

Q. 5/8ths?      A. Yes.

A. And the mother?

A. Roselle Dustbull Gobert.

Q. And is she enrolled?

A. She is enrolled under 1765.

(Testimony of R. E. Miles.)

Q. And what is her blood ratio?

A. 3/4ths.

Q. Blackfeet? A. Yes, sir.

Q. Do those records reflect or should they reflect [7] the marital status of any of the enrolled Indians?

A. We do not keep marriage records. I have seen these records show the marital status as of the date we enrolled them, or on the census I should say.

Q. When was that census?

A. This census was December 31, 1939.

Q. Does that reflect whether Eleanora Gobert was married?

A. No, she is single on this record.

Q. I now ask you how long you have been on the Blackfeet Reservation?

A. Well actually I have been on the Blackfeet Reservation about 19 years.

Q. And in the course of your official capacity and also from residence are you familiar with the exterior boundaries of the Blackfeet Reservation?

A. Yes, I am.

Q. Would you tell us what the northern boundary is?

A. Do you want me to look at the——

Q. If you know of your own knowledge?

A. The Canadian Line.

Q. The eastern line?

A. The eastern boundary is Cut Bank and then about two miles north of Cut Bank, I am giving you



(Testimony of R. E. Miles.)

an estimate, and then it goes up to the Canadian Line.

Q. How about the southern boundary? [8]

A. The southern boundary is Birch Creek.

Q. And the western boundary?

A. Western boundary is Glacier National Park and Lewis and Clark National Forest.

Q. Now, Mr. Miles, in the time you spend on the reservation have you had any occasion to become acquainted with the location of the Chester Guith ranch?

A. Well, I will have to put it this way, I and the Irrigation Engineer was out that way I should judge about a year ago or something like that and we were discussing an experimental grass plot and he told me, he pointed out that lay near the Seville Irrigation.

Mr. J. J. O'Connell: To which we object on the grounds that it is hearsay.

The Court: Sustain the objection.

Mr. M. O'Connell: That is all we have at this time from the witness.

### Cross Examination

Q. (By Mr. J. J. O'Connell): Now, Mr. Miles, I just had one question. When you were asked whether or not you had a record with reference to the marital status of Eleanora Gobert I think you stated that the census was taken on December 31, 1939? [9]

A. That is when it was made, yes, sir.

(Testimony of R. E. Miles.)

Q. And she according to your records was born August 14, 1938?

A. Just a minute now.

Q. Is that correct? A. That is correct.

Q. So that when you say she was single as of your record December 31, 1939, you base that on the fact she was just over a year old?

A. That is self-evident.

Q. Then you were not stating for the jury or for the benefit of the jury as far as your present record is concerned and particularly your record of the 9th day of January, 1954, that you have any record that shows the marital status of Eleanora Gobert?

A. That is correct.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: Call Eleanora Gobert.

The Court: We will take a recess for 15 minutes.  
(2:10)

Court resumed, pursuant to recess, at 2:30 o'clock p.m., at which time the jury, defendant and all counsel were present.

Mr. M. O'Connell: Call Eleanora Gobert as a witness.

Mr. J. J. O'Connell: Your Honor, before we call her I [10] wonder if I could ask to have Mr. Miles recalled to ask him just one more question?

The Court: Certainly.

R. E. MILES

resumed the stand and testified as follows:



(Testimony of R. E. Miles.)

Cross Examination continued

Q. (By Mr. J. J. O'Connell): Mr. Miles, you gave Miss Gobert's birth date as August 14, 1938?

A. That is right.

Q. And I wondered how did you obtain that information?

A. From the census.

Q. Was that a census made in 1939?

A. Yes, sir. All the living Indians on that date were on this census, enrolled Indians.

Q. Some people went to the Gobert ranch, I mean somebody representing you?

A. No, sir, that was taken by birth and death certificates.

Q. By birth and death certificates?

A. Yes.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: Eleanora Gobert. [11]

### ELEANORA GOBERT

the prosecutrix, was called as a witness for plaintiff and having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. M. O'Connell): Would you state your name?

A. Eleanora Gobert.

Q. Where do you live?

A. Cut Bank.

Q. Do you live in Cut Bank?

A. About 10 miles west.

Q. 10 miles west?

A. Yes.

Q. Do you live on the Indian Reservation?

(Testimony of Eleanora Gobert.)

A. Yes.

Q. And what Reservation is that?

A. Blackfeet Indian.

Q. Blackfeet?           A. Yes.

Q. And with whom do you live?

A. What?

Q. Who do you live with?

A. My folks.

Q. When you say your folks—— [12]

The Court: Have her speak louder.

Q. (By Mr. M. O'Connell): Who do you live with?           A. My folks.

Q. Your father and mother?           A. Yes.

Q. What are their names?

A. Roselle and Edward Gobert.

Q. Are you married?           A. No.

Q. How old are you now?           A. Sixteen.

Q. Have you ever been married?           A. No.

Q. Have you ever lived as wife and husband with anyone?           A. No.

Q. Now going to back to the year 1954 do you recall the events of the day January 9th, 1954?

A. Yes.

Q. And where were you living at that time? Where?

The Court: You will have to repeat her answers after her I suspect or some of the jury won't get it.

(Testimony of Eleanora Gobert.)

Q. (By Mr. M. O'Connell): Where were you living on January 9th, 1954?

A. On Seville. [13]

Q. Did you say Seville? A. Yes.

Q. And what is Seville?

A. Right around where we live.

Q. What?

A. Right around where we live.

Q. Were you living at home with your folks on that day? A. Yes.

Q. Do you remember what happened on January 9th, 1954? Where were you at noon on that day?

A. I was home right around just before noon.

Q. You say you were home just before noon?

A. Yes.

Q. And what were you doing?

A. Just around the house, listening to the radio.

Q. How can you remember what you were doing on January 9th, 1954 alone do you remember what day that was? A. Yes.

Q. What day was it? A. Saturday.

Q. And how can you remember that?

A. It was the first Saturday after school was out.

The Court: Can you all hear her testimony? Can you hear? Some of them can't on that back row. You might as well not examine this witness. You will have to repeat [14] her answers after her if she can't talk any louder than that.

Mr. M. O'Connell: Yes, your honor.

Q. (By Mr. M. O'Connell): Would you tell us

(Testimony of Eleanora Gobert.)

how you remember that it was a Saturday, the day January 9th, 1954?

A. It was the day school was out first weekend.

Q. The day school was out? A. Yes.

Q. Do you recall anything with reference to Christmas vacation of that year, were you still on Christmas vacation?

A. No, we just were back to school for about a week.

Q. You had been back to school about a week did you say? A. Yes.

Q. And what were you doing at home about noon that day?

A. I was listening to the radio.

Q. How long did you continue to listen to the radio? A. Until around twelve.

Q. Twelve o'clock noon? A. Yes.

Q. And what did you do then, did you say you were going to take a battery up to get it charged? A. Yes.

Q. What kind of a battery?

A. Car battery.

Q. And where were you going to take it? [15]

A. Chester Guith's place.

Q. When you say Chester Guith do you mean the man you see sitting here in the courtroom?

A. Yes.

Q. You were going to take the battery to his place? A. Yes.

Q. And where is his place from your ranch?

A. About a quarter mile west of our place.

(Testimony of Eleanora Gobert.)

Q. Is it located on the Reservation; is Chester Guith's ranch located on the Reservation?

A. Yes.

Q. And did you take this battery to the ranch of Chester Guith? A. Yes.

Q. How did you move the battery over there?

A. By sled.

Q. By a sled? A. Yes.

Q. And what did you do when you got to the Guith ranch?

A. Went up to the house and knocked at the door and there wasn't no one there.

Mr. J. J. O'Connell: You will have to speak up; it is just impossible to hear, your honor.

The Court: The jurors on the back row there some of them can't hear a word she says. [16]

Mr. M. O'Connell: Eleanora, if you will talk a little slower and a little louder.

Q. (By Mr. M. O'Connell): Now tell us what you did after you took the battery to the Guith ranch?

A. Went up and knocked on the door and there wasn't no one there so I went down to the tool shed.

Q. You knocked on the door and there was no one in? A. No.

Q. And was that at the ranch house?

A. Yes.

Q. And did you say you went to the tool shed then? A. Yes.

Q. And did you find anyone in the tool shed?

(Testimony of Eleanora Gobert.)

A. Yes, I found Chester Guith.

Mr. M. O'Connell: She said: Yes, I found Chester Guith.

Q. You found Chester Guith in the tool shed, is that right? A. Yes.

Q. Did you talk to Chester Guith at that time?

A. Yes.

Q. Did you talk to him at that time?

A. Yes.

Q. And what did, what was said between you and Chester [17] Guith?

A. Just went in and asked him if he would charge the battery. He said it was broke.

Q. What was broke?

A. The battery charger.

Q. He told you his battery charger was broke?

A. Yes.

Q. Was anything further said?

A. He just asked how school was and I said it was just the same as it always was.

Q. You told him school was just the same as it always was? A. Yes.

Q. What happened then?

A. I said "I got to go home." He said: "Why don't you stay a little while longer."

Mr. M. McConnell: Just a moment. Now, Eleanora, you are going to have to speak up. I can't hear you where I am standing.

Q. After you said school is about the same as it always is what further conversation took place?



(Testimony of Eleanora Gobert.)

A. I said I had to go home. Then he asked why didn't I stay a while longer.

The Court: Speak louder. There is no need making a farce of this; we have to hear what this witness is saying [18] and the jury has to hear, and if you can't hear yourself come up closer to her, and when she makes an answer, repeat it after her. We are going to find out what this witness is talking about.

Mr. M. O'Connell: I could hear her.

The Court: You said a moment ago you couldn't, and the jurors sitting on the back row they can't hear her testimony, 2 or 3 have indicated they don't hear it. Now you had better come up closer and let's find out what she has to say; that is what we are here for.

Q. (By Mr. M. O'Connell): Tell us what happened after you said school is about the same as it always is? Now speak up, please.

A. I said I have to be going home now and he asked why I didn't stay a while longer and I said Dad had to get the car started so he can go into town.

Mr. M. O'Connell: I can hear that, your honor, very plain from there.

The Court: I can't hear it and my hearing is pretty fair too.

Mr. M. O'Connell: Can you speak loud enough so I can hear you. I am further from you now than the jurors are so speak loud enough so I can hear what you are saying.

(Testimony of Eleanora Gobert.)

Q. And please tell us again what happened after you said school is about the same as it always was?

A. He asked why I didn't stay a little while longer and I said I had to get home so Dad could get the car started.

Mr. M. O'Connell: Can the jurors hear that?

Q. What happened after you said you have to get home to get the car started?

A. I started out the door and he pulled me back.

Q. Speak up. You did what?

A. I started out the door and he pulled me back.

Q. You mean Chester Guith pulled you back?

A. Yes.

Q. Pulled you back where?

A. Back in the place where he was in.

Q. And was that in the tool shed?

A. Yes.

Q. And what happened then?

A. He started trying to pull my clothes off me.

Q. Speak up, please, I can't hear that.

A. He started to pull my clothes off me so I started trying to get away and he wouldn't let me go.

Mr. M. O'Connell: And can the jurors hear that?

Q. And did this take place in the tool shed?

A. Yes.

Q. Was there any conversation between you and Chester Guith at that time? A. No. [20]



(Testimony of Eleanora Gobert.)

Q. And what happened after you say he started pulling your clothes off?

A. I started trying to get away.

Q. Did you get away? A. No.

Q. What happened then?

A. He threw me down right by the shelf.

Q. He threw you down where?

A. By the shelf.

Q. Well did he throw you against the wall or where? A. On the ground.

Q. Threw you on the ground? A. Yes.

Q. And what happened then?

A. He started to unbutton his overalls.

Q. He started unbuttoning his overalls?

A. Yes.

Q. Which buttons did he unbutton?

A. Down the front.

Q. And what happened then?

A. He had sexual intercourse with me.

Q. Where? A. In the tool shed.

Q. What clothing did you have on at that time?

A. I had panties and brassiere. [21]

Q. Panties and brassiere? A. Yes.

Q. You said he had sexual intercourse with you, how did he accomplish this? How did he do it?

A. He had his hand down on——

Q. Speak up and tell us how did he accomplish it.

A. He had my arms down by my side with his elbows and with his hands up there.

Q. He had his hands on your shoulders?

(Testimony of Eleanora Gobert.)

A. Yes.

Q. Did he have his hands on your shoulders all the time?      A. Just a——

Q. Would you say that louder; I can't hear that?

A. He put them there after he got through unbuttoning his overalls.

Q. When you say sexual intercourse do you mean he placed his private part inside of your private parts?      A. Yes.

Mr. J. J. O'Connell: Now, your honor, I don't want to be rough but I want to move to strike that on the ground it is completely leading and suggestive.

The Court: Well you may have to lead and suggest; it may be struck out for the present. Question her more particularly and let her state it in her own words.

Q. (By Mr. M. O'Connell): Now you said that the defendant Guith accomplished an act of sexual intercourse with you?      A. Yes.

Q. Just exactly how did he do this?

A. How do you mean?

Q. What did he do that makes you say that he had sexual intercourse with you, what did he do?

A. How do you mean?

Q. Well do you know what sexual intercourse is; what is it?

A. Intercourse between a man and woman.

Q. And how is it done? Go ahead and speak up Eleanora and tell us, show us that you know how

(Testimony of Eleanor Gobert.)

it is done. Could you feel the defendant Chester Guith having sexual intercourse with you?

A. Yes.

Q. Where could you feel it?

A. On the inside.

Q. Up inside of you female organ?

A. Yes.

Q. And how did he accomplish this, how did he do this intercourse, what did he place inside you?

A. Male organ.

Q. He placed his male organ inside you?

A. Yes. [23]

Q. Was there any movement of his body during the intercourse, was there? A. Yes.

Q. And what sort of movement?

A. Up and down.

Q. Up and down? A. Yes.

Q. And you say that you could feel his organ inside you during this time? A. Yes.

Q. And when you say you could feel it inside you do you mean you could feel it inside your female organs? A. Yes.

Q. How long did this intercourse continue?

Mr. J. J. O'Connell: I didn't get her answer.

Q. How long did this intercourse continue?

A. About five minutes or more.

Q. About five minutes and then what happened?

A. After he got through he turned his back to me and told me to get up and go to the toilet so I wouldn't get pregnant.

Q. Do you remember what words he used?

(Testimony of Eleanora Gobert.)

A. Yes.

Q. Yes, what words did he use?

A. He said get up and pea so you won't get pregnant. [24]

Q. Will you say that again, please? What did he say?

A. He said get up and pea so you won't get pregnant.

Q. And was this still in the tool shed?

A. Yes.

Q. And what happened after that?

A. I got up and left there right away.

Q. You got up and left? A. Yes.

Q. Did you put any of your clothing back on?

A. Yes.

Q. Where did you go? A. Back home.

Q. And did you say that this happened on January 9th, 1954? A. Yes.

Q. Would you say that louder, please?

A. Yes.

Q. Would you tell us whether or not you had any children? A. One.

Q. You have one child? A. Yes.

Q. And when was this child born?

A. October 2nd.

Q. Would you say that louder, please?

A. October 2nd. [25]

Q. October 2nd in what year? A. 1954.

Q. 1954 and where did you have this child?

A. Browning hospital.

Q. You mean Browning, Montana?

(Testimony of Eleanora Gobert.)

A. Yes.

Q. And who delivered this baby?

A. Dr. King.

Q. Who? A. Dr. King.

Q. Dr. King? A. Yes.

Q. And is that a Government hospital at Brown-  
ing? A. Yes.

Q. Now you have testified as to an act of inter-  
course with the defendant Guith, would you tell us  
whether or not you have had intercourse with any  
other persons? A. No.

Q. You mean that you have not had intercourse?

A. No.

Q. And who did you name as the father of this  
baby?

Mr. J. J. O'Connell: To which we object, your  
honor, on the ground there has been no foundation  
to show, no foundation laid to show whose baby  
this was or how she got it or anything of the kind.

The Court: Well she said she had no intercourse  
with [26] anybody else since then as I understood  
it from what I heard of her testimony.

Mr. J. J. O'Connell: There is actually no evi-  
dence in the record as to any insemination which  
would cause birth and so on; I mean there isn't any  
record of that kind.

The Court: Well I will let her state whose baby  
she considered it; she can make her statement on  
that.

Q. (By Mr. M. O'Connell): Whose baby did  
you consider that baby to be?

(Testimony of Eleanora Gobert.)

A. Chester Guith.

Q. And would you tell us why you say that?

A. He is the only one I ever had intercourse with.

Q. And would you say that again?

A. He is the only one I have ever had intercourse with.

Q. The only one?           A. Yes.

Q. That you have ever had intercourse with?

A. Yes.

Q. Eleanora, you told us that you left the tool shed after an act of intercourse and returned to your home on January 9th, 1954, now was there any conversation between you and defendant Guith just previous to your going home?

A. He told me not to tell my folks.

Q. What was that?

A. He told me not to tell my folks. [27]

Q. Did he say anything further?

A. He says——

Q. Could you say that louder?

A. He said they will really bawl me out for it if I told them.

Mr. M. O'Connell: Did the jurors hear this last testimony?

The Court: What did she say?

Mr. M. O'Connell: Your honor, she said that just as she was leaving the tool shed to go home defendant Guith said to her don't tell your folks or they will bawl you out for it.

Q. (By Mr. M. O'Connell): Do you recall



(Testimony of Eleanora Gobert.)

whether or not you had any other acts of intercourse with the defendant Guith on or about the 9th day of January, 1954?

Mr. J. J. O'Connell: To which we object, your honor, on the grounds that it is irrelevant and immaterial; the only offense involved here is the offense of which the defendant is charged.

The Court: Yes, that is all right, similar offenses about the same time are admissible; overrule the objection.

Mr. M. O'Connell: Read the question.

(Question read.)

A. Three or four other times after that. [28]

Q. Did you say you had intercourse three or four other times with him after that?

A. Yes.

Q. Do you remember when they were?

A. No.

Q. How long after the first time?

A. About three or four weeks after.

Q. Three or four weeks after and you said you had intercourse with him did you say three or four times? A. Yes.

The Court: Within three or four weeks afterwards three or four times.

Q. (By Mr. M. O'Connell): Eleanora, tell us whether or not the three or four times were three or four weeks after the first intercourse?

A. In three or four weeks after.

Mr. M. O'Connell: You may cross examine.



(Testimony of Eleanora Gobert.)

Cross Examination

Q. (By Mr. J. J. O'Connell): Now, Eleanora, how do you recall January 9th, 1954?

A. It was about the first week after we started school after Christmas vacation.

Q. Now you just said that within 3 or 4 weeks after [29] January 9th, 1954, that you had sexual intercourse with Mr. Guith and you don't remember those dates?

A. No.

Q. You don't remember any of those dates?

A. No.

Q. Any of them at all?

A. No.

Q. I didn't get your answer?

A. Not after the first.

Q. Now who first talked to you about this case?

A. You mean when?

Q. About bringing a charge, about bringing a charge against Mr. Guith?

A. It was the F.B.I.

Q. Who?

A. F.B.I.

Q. The F.B.I.?

A. Yes.

Q. And when was that?

A. It was around the first part of October.

Q. Around the first part of October, 1954?

A. Yes.

Q. And was that before or after this baby was born?

A. It was after.

Q. It was after the baby was born and was that the [30] first time that you were asked to recall what date it was?

A. Yes.

(Testimony of Eleanora Gobert.)

Q. And how did you pick out that date of January 9th, 1954.

A. It was the first week after school had started after Christmas vacation.

Q. Do you remember what the name of the F.B.I. agent was or remember any of their names?

A. I am pretty sure they called him Gene Fopp.

Q. Now did he ask you early in October of 1954 just what date it was?

A. He asked me if I could remember.

Q. And what did you tell him at that time?

A. I had to stop and think a while after that.

Q. You had to stop and think a while?

A. Yes.

Q. Did he suggest to you when it might have been?

A. No.

Q. He didn't suggest it at all?

A. No.

Q. And you are sure, you are sure it was in the month of January?

A. Yes, it was.

Q. Now do you remember just about what time it was, what time of the day? [31]

A. It was around one o'clock some place.

Q. Now you testified that you were home just before noontime listening to the radio, isn't that right?

A. Yes.

Q. And then was it your dad or your mother who asked you to take the battery over to Guith?

A. Dad asked me so he could get the car started.

Q. And about what time was that, around noontime?

(Testimony of Eleanora Gobert.)

A. You mean when he asked me to take the battery?

Q. When he asked you to take the battery over to Guith?

A. It was around quarter to twelve.

Q. About 15 minutes to twelve?

A. Yes.

Q. And did you go directly from your home over to Guith's home?

A. No, I waited until the program I was listening to was over.

Q. What until twelve o'clock? A. Yes.

Q. And then did you leave right after that?

A. Yes.

Q. Just about twelve o'clock or a little after twelve? A. Little after twelve.

Q. Now I think you testified your place was about a mile from Mr. Guith's ranch? [32]

A. About a quarter of a mile.

Q. About a quarter of a mile and about how long did it take you to get over there?

A. About 10 or 15 minutes.

Q. About 10 or 15 minutes so that it would be some time before twelve thirty that you got there, is that right?

A. About 5 or 10 minutes before, around 5 or 10 minutes before twelve thirty.

Q. Yes, something like that. Now you had been in the habit of going over to Guiths on many errands for your folks, isn't that true? A. Yes.

Q. You went over there not only with the bat-

(Testimony of Eleanora Gobert.)

tery but for eggs and for different things of that kind, hadn't you?      A. Yes.

Q. And how long had that been going on?

A. Since that, around that fall before.

Q. Do you know or did you know Mrs. Guith?

A. Yes.

Q. Now do you know her quite well, have you seen her many times?

A. I talked to her quite a bit.

Q. You talked to her quite a bit. Now when you went over that day on the 9th of January as you say with the battery to be charged did you go first to the house? [33]      A. Yes.

Q. Did you go to the front door?      A. Yes.

Q. And do you remember what kind of a door they have?      A. Yes, just about.

Q. It is an aluminum door, isn't that aluminum with a glass panel?

A. I guess it is now but then it was just a wooden screen.

Q. And did you knock on the door or use the bell or what did you do?

A. I knocked on the door.

Q. Did you knock on the screen door you are talking about or on the inside door?

A. Knocked on the inside door.

Q. And nobody answered?      A. No.

Q. And the Guith children didn't come out and answer?      A. No.

Q. And Mrs. Guith didn't come out and answer?

A. No, he told me that she was in town.

(Testimony of Eleanora Gobert.)

Q. Who told you she was in town?

A. Chester Guith.

Q. Do you remember what kind of a day January 9th, 1954 was? [34]

A. It wasn't real cold that day.

Q. It was what?

A. It wasn't real cold that day.

Q. It wasn't real cold, was there any snow on the ground? A. Yes.

Q. Do you know about how much?

A. About a foot deep.

Q. About a foot deep? A. Yes.

Q. And about how long did you knock on the door?

A. About 2 or 3 times and then I went out.

Q. Then you went out to the tool shed?

A. Yes.

Q. Is the tool shed fairly close to the house?

A. No, it is not real close to it.

Q. It is one of the smaller buildings, isn't that right, on the Guith farm; I mean there are several buildings on the farm, isn't that correct, but it is one of the smaller buildings closer to the house?

A. One of the smaller buildings but it is almost straight down from the barn.

Q. Are there any windows in the tool shed?

A. Yes.

Q. How many? A. About two. [35]

Q. Two windows, are they on the side facing the house? A. Yes.

(Testimony of Eleanora Gobert.)

Q. Now what kind of a floor is there in the tool shed?      A. Just a dirt floor.

Q. Just a dirt floor. Are there any, you said when this act took place under a shelf or near a shelf?

A. Right by the shelf on the north wall.

Q. I didn't get all of your answer.

A. By the shelf on the north wall.

Q. By the shelf on the north wall, is that the side closest to the house?

A. It is the side opposite the house.

Q. On the side opposite the house?

A. Yes.

Q. You are sure of that now?      A. Yes.

Q. And Mr. Guith told you that his charger was broken, is that right?      A. Yes.

Q. Did he have it there in the tool shed?

A. He said it was at Johnny Flaget's house.

Q. It was where?

A. At Johnny Flaget's house being fixed.

Q. He told you that at that particular time, is that right? [36]      A. Yes.

Q. And do you know Johnny Flaget?

A. No.

Q. When he told you it was at Johnny Flaget's what that mean to you?

A. Just mean it was some one from town.

Q. You knew it was some one from town, did anybody suggest to you that this battery charger, or I mean within recent weeks anybody suggest to



(Testimony of Eleanora Gobert.)

you that his battery charger was at Johnny Flaget's?      A. No.

Q. Did you discuss your testimony in the past few weeks with Mr. Fopp?

A. No, he hasn't been there since last winter sometime.

Q. Did you discuss your testimony with the Assistant United States Attorneys?

A. Just asked me a few questions.

Q. Now as a matter of fact didn't you tell Mr. Fopp, didn't you tell Mr. Fopp that you went there and had the battery charged on that particular day?

A. I said I was going to have it charged.

Q. Well when he first talked with you didn't you tell him that you had the battery charged on that day?

A. No, I told him I was going to have it charged.

Q. That you were going to have it charged?

A. Yes.

Q. And you definitely testify now and make the statement now that Mr. Guith told you that the battery was at Johnny Flaget's, the battery charger?

A. Yes.

Q. Was the only thing he asked you about when you got to the tool shed was how school was?

A. He just told me where the charger was just before that and I said I had to be going home.

Q. I didn't mean what you said.

A. I said he just told me where the charger was just before that.



(Testimony of Eleanora Gobert.)

Q. What was Mr. Guith doing when you got there?

A. I don't know what he was doing; he was standing by the table there.

Q. Was that on the side close to the house or on the other side?

A. The side close to the house.

Q. On the side close to the house and you told him that school was just the same as it always was?

A. Yes.

Q. And then you said you were going to go home?

A. Yes.

Q. Is that all that went on?

A. Yes. [38]

Q. And then he said to you why don't you stay around a little while longer?

A. Yes.

Q. What did he say what he wanted you to stay around a little while longer for?

Mr. M. O'Connell: Objected to, your honor, as calling for a conclusion and opinion of the witness.

The Court: Well he can ask her if she knew why he said it.

Q. (By Mr. J. J. O'Connell): I mean did he tell you why he wanted you to stay around longer?

A. He said why don't you stay a little while longer and visit.

Q. And visit and then you started to go, was that it, or you started to leave or did you decide to stay?

A. I said I got to go home and help dad start the car.

Q. You got to go home and you started for the

(Testimony of Eleanora Gobert.)

door, is that right? A. Yes.

Q. Are there one or two doors on that tool shed? A. Two.

Q. There are two rather large doors, aren't they? A. Yes.

Q. What? [39] A. Yes.

Q. And as you went through the door he grabbed you, is that right? A. Yes.

Q. Did you have your back to him when he grabbed you?

A. I started to pull the door open and he pulled me back.

Q. You started to push the door open and he pulled you back, did he grab you by the shoulders or clothing or what? A. By my arms.

Q. Grabbed you by the arm? A. Yes.

Q. Now what kind of clothing did you have on that day, Eleanora?

A. I had a pair of jeans and jacket.

Q. You had a pair of jeans and a jacket?

A. Yes.

Q. Those are ordinary overall jeans?

A. Yes.

Q. Now do they button up the front or back or side? A. They zip up the side.

Q. They zip up the side, and what kind of a jacket did you have on?

A. It was a boy's jacket.

Q. It was a what? [40]

A. A boy's jacket.

Q. A boy's jacket—I mean was it a leather one or? A. Cloth.

(Testimony of Eleanora Gobert.)

Q. Cloth, and how did it button or did it have a zipper on it or what?

A. Zipped down the front.

Q. Zipped up and down the front?

A. Yes.

Q. And then the only under clothing you had were your panties and your brassiere?

A. Yes.

Q. That is all you had on? A. Yes.

Q. Now did he take, did Mr. Guith take your clothes off?

A. Just my jeans down to my ankles.

Q. He what?

A. Just my jeans down to my ankles.

Q. He took your jeans down to your ankles?

A. Yes.

Q. And that is as far as he took them?

A. Yes.

Q. Did he pull the zipper or did you pull the zipper? A. He did.

Q. He pulled the zipper and it was on the side?

A. Yes. [41]

Q. And did he pull your panties down?

A. No.

Q. No he did not? A. No.

Q. And what about your jacket, did he leave that on? A. Yes.

Q. He left that on, so that when you testified a few minutes ago that all you had on were your brassiere and panties that was not correct?

A. He just asked what under clothes I had on.

(Testimony of Eleanora Gobert.)

Q. Well at that time you meant to tell him what your under clothes were and not what you had on?

A. Yes.

Q. And were your panties taken down at any time?           A. No.

Q. Now I think your testimony was as I have it here that while this was going on there was no conversation between you at all?           A. No.

Q. Did you protest at all?

A. I did try to get away but I couldn't.

Q. Well did you tell him not to do it?

A. He asked me how I felt and I said I didn't know.

Q. I mean before you said that, that was after it had taken place; I am talking about when he was pulling down your [42] pants, how far and so on, did you fight with him or?           A. Yes.

Q. What?           A. Yes.

Q. What did you do?

A. Tried to get away.

Q. You tried to get away, did you tell him not to do it?           A. I just kept trying to get away.

Q. Where were you when you were trying to get away, were you standing up?           A. Yes.

Q. You were standing up, now there was some testimony that he threw you down by the shelf on the ground?           A. Yes.

Q. Is that on this, did you state on this dirt ground or dirt floor?

A. He did have a canvas there by that wall.

Q. It was what?

(Testimony of Eleanora Gobert.)

A. A canvas laying by that wall.

Q. Did he put you down on the canvas?

A. Yes.

Q. So that when you told Mr. O'Connell that he put you down on the ground you really didn't mean that, he had a canvas there that he put you on? A. Yes. [43]

Q. Am I stating that correct? Is that correct, Eleanora? A. Yes.

Q. I think you know what an oath is, don't you? You know when you came up here you were sworn that you would tell the truth and the full truth about this whole thing and you realize what an oath is? A. Yes.

Q. Now you said that he had your arms down? A. Yes.

Q. And he had his hands on your shoulders? A. Yes.

Q. And he put them there until he had his pants unbuttoned, is that correct?

A. He had his one hand loose.

Q. He had one hand loose, I thought you said he had his hands on your shoulders?

A. I said he had his one hand on my shoulder until he got his pants down.

Q. Do you remember what kind of pants he had on that day?

A. They button down the front.

Q. I mean were they jeans or work pants or overalls or? A. It was jeans.

(Testimony of Eleanora Gobert.)

Q. They were I mean just short pants, they were just jeans? A. Yes. [44]

Q. And while he was doing this were you laying on the ground or on the canvas?

A. On the canvas.

Q. You were laying there while he was doing this? A. Yes.

Q. And all of the time you had your panty on, is that correct? A. Yes.

Q. Were those pants closed; I mean were they closed? A. What do you mean.

Q. Was there any opening in those pants?

A. No.

Q. No, was it a—did they cover your female organ, did they cover your body all around your female organ? A. Yes.

Q. Now you said that you felt his organ inside yours when Mr. O'Connell was questioning you; now, did you? A. Yes.

Q. You are sure of that? A. Yes.

Q. Even though you had these pants on?

A. He got it through the leg on the side.

Q. He got into the leg on the side; I thought you told me there hadn't been any opening in them?

A. The leg was kind of loose; the legs were kind of loose. [45]

Q. And I think you said you had never had an act of sexual intercourse before with anyone?

A. No.

Q. You never had? A. No.



(Testimony of Eleanora Gobert.)

Q. None of the boys around there, quite a few boys use to come to your place?

A. They were all cousins.

Q. They were just cousins; you have 3 or 4 sisters, don't you, older than you? A. Yes.

Q. And aren't there quite a few boys have been coming there right along and particularly in that period of time? A. No.

Q. What? A. No.

Q. There were not? A. No.

Q. No boys at all? A. No.

Q. And none of these boys had ever touched you? A. No.

Q. Had anyone tried to touch you?

A. No.

Q. Nobody had? A. No. [46]

Q. And none of these boys had ever touched you? A. No.

Q. Had anyone tried to touch you?

A. No.

Q. Nobody had? A. No.

Q. Well how did you know then that this was an act of sexual intercourse?

A. Well one of my cousins told me about it.

Q. A few of your cousins told you a lot about it? A. Just that one, Karen Brown.

Q. Karen Brown, is she your first cousin?

A. Yes.

Q. And did she tell you quite a bit about it?

A. Yes, every time I go down there she would



(Testimony of Eleanora Gobert.)

try and talk like that to me and I wouldn't pay no attention to her.

Q. I didn't get that; you wouldn't pay any attention to who?

A. To Karen Brown when she would try and talk that way to me.

Q. You wouldn't pay any attention to her?

A. No.

Q. Now you have some cousins that are boys, don't you?      A. Yes, sir.

Q. How about it, have they ever talked to you about that? [47]

A. No, they never even used any kind of foul language around there.

Q. They did not?      A. No.

Q. Now did you go home and tell your father about this situation?      A. No.

Q. You never told him about it?      A. No.

Q. Did you tell him at any time between January 9th, 1954 and October?      A. No.

Q. Never told him a word about it?

A. No.

Q. Did you tell your mother?      A. No.

Q. You didn't tell anybody?      A. No.

Q. Now didn't they ask you about your condition?      A. No.

Q. They ask you if you were pregnant?

A. No.

Q. Never asked you?      A. No.

Q. I presume you lived in the house with your folks all [48] that period from January 9th, 1954,

(Testimony of Eleanora Gobert.)

down to October of 1954, and I presume you shared the house with them, the bathroom and so on, things of that kind; when was it the first time you told anyone that Chester Guith had done this to you?

A. When the F.B.I.

Q. When the F.B.I. came around; do you remember whether or not you took some shots in the hospital to make you talk? A. No.

Q. You don't remember any shots?

A. No.

Q. Was it in the hospital where you first told the F.B.I. about Mr. Guith?

A. No, he came to the house after I got home.

Q. He came to the house after you got home; now, as a matter of fact, didn't you tell your father that it was a lie that Chester Guith had done anything to you? A. No.

Q. You didn't tell him that? A. No.

Q. Did your father tell you that it was a lie that Chester Guith had done anything to you?

A. No.

Q. Now this was the first time you had ever had sexual intercourse with anybody as I understand your testimony? A. Yes. [49]

Q. I mean did it hurt?

A. I didn't know.

Q. You what?

A. I didn't know it, I was trying to get away.

Q. I can't hear what you are saying and I am sure the jury can't either.

(Testimony of Eleanora Gobert.)

A. I said I didn't pay much attention while I was trying to get away.

Q. You didn't pay much attention and all that, do you remember whether you bled?

A. When?

Q. After this so-called act of sexual intercourse?

A. No.

Q. You didn't bleed?

A. No, not that I can remember.

Q. You say that the act went on for about 5 minutes?      A. 5 minutes or more.

Q. 5 minutes or more, have any idea how much more?      A. No.

Q. You place it about 5 minutes and maybe a little bit more and that is all, 6 to 7 minutes?

A. Yes.

Q. During this 6 or 7 minutes did you say anything to Mr. Guith?

A. Well when he asked me how I felt I just said I didn't [50] know.

Q. When he asked you what?

A. How it felt I just said I didn't know.

Q. You just said you didn't know, is that the only conversation that went on between you?

A. Yes.

Q. Did you tell him to get off, warn him to get off?

A. I kept trying to get away and I couldn't.

Q. But you didn't say anything to him?

A. Nothing beside I didn't know.

Q. And then after he got through do you re-

(Testimony of Eleanora Gobert.)

member whether he had, whether he left any fluid or what we call spermatozoa around on your female organ?

A. I didn't pay any attention; I just got up and left.

Q. You got up and left? A. Yes.

Q. Did you pull up your panties? A. Yes.

Q. And that as I take it was the only thing, those were down around your ankles, is that right, and you just got up and left, was that before he told you you better go and pea?

A. After.

Q. It was after? A. Yes. [51]

Q. Did you ask him why you had to go and pea?

A. He said go pea so you won't get pregnant.

Q. So you won't get pregnant, is that what he told you, and did you go, did you go and pea?

A. No, I just got up and left for home.

Q. Well did you run home?

A. I couldn't. I had that battery on a sled.

Q. You hauled the battery on back, is that right? A. Yes.

Q. And when you got back to the house was your father there, your dad there?

A. Yes.

Q. What did you say to him?

A. I just went in and told him the charger was broken.

Q. You told him the charger was broken?

A. Yes.

Q. And that is all you said? A. Yes.

(Testimony of Eleanora Gobert.)

Q. You didn't tell him anything that Mr. Guith had done to you?      A. No.

Q. And then as I have your testimony here you said you left right away, you put your clothing back on, is that the answer, you told Mr. O'Connell that you put your clothes back on? [52]

A. —Pulled my jeans up and snapped or zipped them and—

Q. By that you don't want to leave us with the impression that I got from your testimony in direct examination that the only thing you had on were your panties and your brassiere and then you got up and picked up your pants, your jeans and jacket and so on and put those on?

A. I already had my jacket on.

Q. You already had it on and all you did when you were telling Mr. O'Connell you were putting your clothes back on, what you actually did was to pull your jeans up from your ankles?

A. Yes.

Q. Now were your clothes torn?      A. No.

Q. They weren't torn?      A. No.

Q. Do you remember about what time you got back to the house, to your house?

A. It was between—

Q. This took place apparently some time around 12:30, about noontime on January 9th and took 5 or 7 minutes or maybe 10, and then you went directly home, is that correct, so you were home about one o'clock or before one o'clock?

A. Between quarter to one and one.



(Testimony of Eleanora Gobert.)

Q. Now all of this period then you never told anyone you [53] were pregnant? A. No.

Q. Who took you to the hospital at Browning?  
A. Mommy and daddy.

Q. Your mother and dad? A. Yes.

Q. Why did they take you to the hospital at Browning?

A. Because my stomach and back were really hurting.

Q. They were really hurting you, did they examine your stomach and back?

A. They took X-rays.

Q. Well that is the hospital but I mean your mother and dad? A. No.

Q. They didn't? A. No.

Q. Where is this baby now?

A. She is at the motel where we are staying.

Q. She is where?

A. At the motel where we are staying.

Q. The motel here in Great Falls?

A. Yes.

Q. Will we be able to see the baby?

A. Yes, I guess so.

Q. And if possible if necessary can we make a blood test? [54] A. Yes.

Q. Can you tell the jury now whether the baby is dark as an Indian or shows any white features?

A. She isn't really dark and her hair is kind of getting light.

Q. Is she really dark? A. No.

Q. I mean does she show any white features or

(Testimony of Eleanora Gobert.)

features of the white race of having for instance a white father?      A. Yes.

Q. In what way?

A. Her hair and her skin.

Q. Her hair and her skin.      A. Yes.

Q. Now why did you go back these 3 or 4 other times?      A. I went back to get gas.

Q. You went back to get gas?      A. Yes.

Q. Well why did you go back as far as the sexual intercourse was concerned these 3 or 4 other times?      A. What?

Q. Well you said you had intercourse, your testimony is you had intercourse within a 3 or 4 week period after January 9th 3 or 4 other times with Mr. Guith, is that your testimony? [55]

A. Yes.

Q. And those dates you don't remember?

A. No.

Q. You don't remember at all?      A. No.

Q. But why, why did you go back?

A. I just went back after gas.

Q. I mean on those 3 or 4 occasions did Mr. Guith have to tear your clothes off?

A. He took them off himself.

Q. What?

A. He took them off himself.

Q. You mean you left him take your clothes off?

A. What?

Q. You left him take your clothes off?

A. Yes.

Q. Did you fight with him?



(Testimony of Eleanora Gobert.)

A. Oh, not as much.

Q. What? A. Not much.

Q. Not much, well I mean you knew what he had done to you on January 9th and when you went back again, before you went back who sent you back the other times your folks again?

A. I just asked daddy could I use his car so I got him gas. [56]

Q. You asked your dad if you could use his car if you got the gas and you went to get the gas at Mr. Guith's so you could go to town?

A. I didn't.

Q. Where did you go?

A. I went up to my brother's place and stayed there for a while.

Q. With your father's car? A. Yes.

Q. And how long were you gone?

A. I wasn't gone more than an hour.

Q. What?

A. I wasn't gone more than half an hour.

Q. How long? A. Half an hour.

Q. I thought you said you went up to your brother's place and stayed there for some time?

A. Went up there to listen to some of his records.

Q. You just went up there to visit?

A. To listen to some of his records.

Q. You listened to some of his records?

A. And play with his smallest girl.

Q. Did you stay over night or stay any period of time?

(Testimony of Eleanora Gobert.)

A. No, just about a half an hour and then I went back home. [57]

Q. So when you went to Chester Guith's to get the gas after this alleged occurrence on January 9th, you went on your own, you went there to get the gas for yourself? A. Yes.

Q. When you were going back home January 9th, 1954, after this occurrence took place did you see Mrs. Guith? A. No.

Q. Didn't see her at all?

A. She didn't get home until later that afternoon.

Q. She didn't get home until later that afternoon, how late? A. I don't know.

Q. You don't know how late, well, was it very late in the afternoon?

A. No, it wasn't real late.

Q. And did you see the two children around there at all? A. No.

Q. Do you know whether or not the car was there? A. No, it wasn't.

Q. The car was not there? A. No.

Q. Do you know Mr. Guith's car? Do you know what kind he had?

A. He had a blue 1949 Chevrolet.

Q. A blue 1949 Chevrolet? [58]

A. Yes.

Q. Is it all blue or a two-tone car?

A. It was all blue.

Mr. J. J. O'Connell: I think that is all.

(Testimony of Eleanora Gobert.)

Redirect Examination

Q. (By Mr. M. O'Connell): Eleanora, when you were in the tool shed with defendant Guith and you were on the floor and he got on top of you, your jeans were down around your ankles, is that right?

A. Yes.

Q. What was the position of your legs at that time?

A. They were doubled way up.

Q. They were doubled way up?

A. Yes.

Q. Were your knees doubled back against your chest?

A. No.

Q. Not that way?

A. No.

Mr. J. J. O'Connell: Don't lead her too much.

Q. About how far were they?

A. Doubled back.

Q. Doubled back?

A. Yes; my feet were still on the ground. [59]

Q. Your feet were still on the ground, and were your feet right close together or were they some distance apart?

A. They were quite a bit apart.

Q. Now these panties that you say you were wearing what type panties were they?

A. They were kind of loose around the legs.

Q. Do they have long legs on them?

A. No.

Q. Are they the very abbreviated kind, very short kind?

A. How do you mean, which?

Q. Well were they the regular, what kind of material were they made with, do you know?

(Testimony of Eleanora Gobert.)

A. I don't know just what kind of material they were made of.

Q. But how long were the legs on those panties?

A. They were just even.

Q. Would you answer that again, just how long were the legs on those pants?

A. They were just about even with the other part.

Q. What do you mean by that, about the same length? A. Yes.

Q. Eleanora, do you have dates with boys often?

A. No.

Q. Did you ever have dates with boys?

A. Never did pay any attention to them. [60]

Q. You what?

A. Never did pay any attention to them.

Q. Have you ever had a date with a boy?

A. No.

Q. Could you explain how defendant Guith got his male organ into your female organ around these panties?

Mr. J. J. O'Connell: To which we object on the ground it is repetition, already been gone into.

The Court: Well you went into that pretty much in detail; I think I will let him proceed.

Mr. M. O'Connell: Your honor, do you mean defense counsel went into it on cross examination or that I had gone into it previously?

The Court: No, that he had on cross examination, therefore, on redirect you can go over the

(Testimony of Eleanora Gobert.)

ground if there is something there you think should be further explained.

Mr. M. O'Connell: Answer the question.

A. In through the leg.

Q. Would you repeat that please?

A. In through the leg.

Q. Do you recall whether or not he had any trouble getting his organ into yours because of the panties?      A. No, not much.

Mr. M. O'Connell: No further redirect, your honor.

Mr. J. J. O'Connell: Just a few questions. [61]

#### Recross Examination

Q. (By Mr. J. J. O'Connell): Eleanora, you had said that Mr. Guith was holding you, was holding your shoulders and so on, did he use his hand to get his sexual organ into your pants?

A. Yes.

Q. He did?      A. Yes.

Q. Which hand?      A. His right hand.

Q. His right hand and was this after he was holding your shoulders or what?

A. Before he got my shoulders.

Q. Before he got your shoulders?

A. I did have my shoulder on the side.

Q. Now I mean you very rarely wear a dress, isn't that correct, Eleanora?      A. No.

Q. I mean have you worn a dress very much?

A. When I was, before I was in the 7th grade when I went to school quite a bit.



(Testimony of Eleanora Gobert.)

Q. I mean in the last, '54 and '55?

A. No.

Q. You wear jeans most of the time, isn't that right? [62]

A. Yes.

Q. Now where were those panties on—did your under panties come down to about here on you?

A. They came right about there.

Q. Right about here, would you just stand up and indicate to the jury?

A. They came right about there.

Q. Up in here? A. No.

Q. Down about here?

A. Just right about like that.

Q. And you don't remember what kind of material they were? A. No.

Q. Now what did you do with your arms while he was on top of you?

A. Had them down by my side and I couldn't get them loose.

Q. You had them down by your sides and you couldn't get them loose? A. Yes.

Q. How was he keeping them there?

A. He had his elbows.

Q. He had his elbows against them?

A. Yes. [63]

Q. Whereabouts on your body for instance?

A. Right by my side.

Q. Right along side just along the ribs in here?

A. Yes.

Q. Now when you told Mr. O'Connell you never had anything to do with boys or never had a date



(Testimony of Eleanora Gobert.)

with a boy you don't want us to understand you have never been out with a boy?

A. No, I never did really pay any attention to them.

Mr. M. O'Connell: I didn't hear that.

A. I never did really pay any attention to them.

Q. You mean you have never been out with a boy, is that what you are trying to testify?

A. No.

Q. You never have? A. No.

Q. Have you ever been into Cut Bank with your sisters in your dad's car and gone out with your sisters? A. No.

Q. You never have?

A. Neither of us had driver's license.

Q. I didn't get your answer.

A. Neither of us didn't have driver's license; he wouldn't let us use it alone on the highway.

Q. Have you been in to Cut Bank? [64]

Q. In your dad's car?

A. With my dad and that was all.

Q. And you didn't pick up some boys from the Airbase there at Cut Bank? A. No.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: No further questions.

The Court: Very well, call your next witness.

The Court: We will take a recess for 15 minutes.  
(3:55 p.m.)

Court resumed, pursuant to recess, at 4:10 p.m., at which time the defendant, jury and all counsel were present.

The Court: Next witness.

Mr. M. O'Connell: Mr. H. C. Davis.

### H. C. DAVIS

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. M. O'Connell): Would you state your name, please? A. H. C. Davis.

Q. Where do you reside?

A. Cut Bank, Montana. [65]

Q. And what is your occupation?

A. Superintendent of Schools.

Q. How long have you been so employed?

A. Since September, 1930; 25 year period.

Q. Now can you tell us when Christmas vacation started in the grade schools in Cut Bank in 1953? A. I can.

Q. When did it start?

A. It started on December 18th; our entire system of grades and junior high and high school all have the same period which is two weeks' period starting on the 18th and went to Monday morning January 4th, 1954.

Q. School resumed January 4th?

A. Correct.

Q. And do you recall what day of the week January 4th was? A. Monday morning.

Q. Do you know Eleanora Gobert?

A. Yes, sir.

(Testimony of H. C. Davis.)

Q. Was she going to school in Cut Bank at that time?

A. Yes, she was a student at the Cut Bank junior high; our junior high includes 7th and 8th grades.

Q. And do you know what grade she was in?

A. She was in the 8th grade.

Q. In the year 1953? [66]                      A. 1954.

Mr. M. O'Connell: No further examination.

### Cross Examination

Q. (By Mr. J. J. O'Connell): Do you know whether or not she came back to school after the Christmas vacation?

A. Yes, our school register which I have in hand shows that she did come back after the Christmas vacation. She came back after the—just a minute until I check that through—she was absent on January 4th; however, she came, entered the 5th, 6th, 7th, was absent the 8th, and on through the month she missed one more day.

Q. Well then was she there February, March and April and so on?

A. Yes, she concluded the school year, finished the entire school year; the end of the school year, May 28th was the date the school closed that year in 1954.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: Nothing further.

Mr. M. O'Connell: I would like to call Dr. Edward King. [67]

## DR. EDWARD L. KING

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

## Direct Examination

Q. (By Mr. M. O'Connell): Would you state your name, please?

A. Edward L. King.

Q. And your residence?

A. Browning, Montana.

Q. And your occupation?

A. I am a physician.

Q. And how long have you been a physician at Browning?

A. I have been stationed at Browning for the last 23 months.

Q. Who do you work for at Browning?

A. I work for the United States Public Health Service. I am a medical officer detailed to the hospital at Browning.

Q. Where did you take your college work, doctor?

A. I hold a Bachelor of Arts Degree of Ohio University; I have my medical degree from Western Reserve University in Cleveland, Ohio, and my internship was at the United States Public Health Service Hospital at Baltimore, Maryland, which was a rotating internship.

Q. Have you been engaged in the general practice of medicine? [68]

A. Throughout the entire internship and since

(Testimony of Dr. Edward L. King.)

being at Browning I function as a general practitioner.

Q. And how long a period will that include?

A. That will include 35 months, almost three years.

Q. During that time will you tell us whether or not you have practiced any obstetrics?

A. Yes, a considerable part of our work at the Blackfeet Hospital is obstetric; we deliver anywhere from 15 to 30 babies a month. I would say since I have been there I have delivered probably 200 babies.

Q. Do you know Eleanora Gobert?

A. Yes, I am acquainted with her.

Q. Have you ever treated her?

A. Yes, I treated Eleanora on several occasions, mostly subsequent to her pregnancy. I treated her in August of 1954 and again at her delivery in October. From the records on the Blackfeet Hospital she was seen at the out patient clinic in April, 1954. In both April and August she was seen at the clinic regarding her menstrual irregularity. Actually first or I might say in April she was just having irregular periods, there were scanty periods up through March, and she was given some iron therapy. And when I saw her in August again it was a question of ceased menstrual periods, stop of menstrual periods and I did not do a very thorough examination but I could see no good reason why she should not [69] have menstrual periods. I suggested to her mother that the most common



(Testimony of Dr. Edward L. King.)

cause was pregnancy and asked her if she thought her daughter could be pregnant. The mother thought her daughter couldn't be pregnant, that she never went anywhere by herself except occasionally to baby sit for a neighbor.

Q. Now, doctor, you speak of the delivery of Eleanora Gobert, did you deliver a baby for her?

A. Yes, on October 2nd, the parents brought the child to the outpatient department, she was having severe abdominal pain and it was quickly apparent that she was pregnant. I listened for the fetal heart, heard it and took x-rays to make sure of the position of the baby's head, and she had a breeched delivery, a delivery roughly three hours after being admitted to the hospital.

Q. Now with reference to the baby's delivery could you express your opinion as to whether or not it was a full term baby?

A. The baby was full term, the weight was 7 pounds 11 ounces, if anything the baby was rather large and it may have been a week or so over term.

Q. Now you say you delivered her on October 2nd, 1954? A. Yes.

Q. Now, doctor, what is the period of gestation? Or, just a moment, first of all tell us what the period of gestation is? [70]

A. The period of gestation is from the time of the conception to the delivery, or roughly this was the period of time in which the infant grows in the mother's body.

Q. And what is the normal period of gestation?



(Testimony of Dr. Edward L. King.)

A. An average figure that is generally used is 280 days. This is an average figure, however, and we only calculate about 4% of our patients are delivered on that day, so 280 days after conception only about 4% are delivered but within a two week or more span on either side of this 280 days we expect about 96% of our patients to deliver.

Q. You mean that, do you, other than a normal birth if it were two weeks late or two weeks early on the 280 day period?

A. Yes, and sometimes even longer.

Q. You would call that full term?

A. Depending, of course, upon the weight and size and appearance of the child.

Q. Now did you figure back in days from the 2nd of October, 1954?

A. I did. From the 2nd of October back would place the time of conception roughly around the 24th of January.

Q. 24th of January?

A. That would be the 280 days. Now we can give a couple weeks on each side and still be within a statistical-wise range. [71]

Q. Well, now in your opinion, doctor, if a woman were conceived on the 9th day of January and she delivered her baby on the 2nd day of October of the same year, would that be a normal term?

A. I would figure that was a normal term for pregnancy.

Q. Now was there anything unusual about the way this pregnancy came to you?

(Testimony of Dr. Edward L. King.)

A. Well, as I said, I saw her six weeks before we delivered and it wasn't obvious that she was pregnant. As I said, I did not examine her abdomen; I feel confident if I had, I would have found the pregnancy.

Q. Doctor, do you know any reason why this particular pregnancy was not exposed?

A. The position of the fetus, the position of the baby, even at the time she came in to labor was not too obvious; the baby's head was drawn up under the ribs so it was lying in a linear position in a recess of the body.

Q. And what effect would that have on the pregnancy?

A. It would mask the pregnancy very considerably so it wouldn't be obvious to people.

Q. You mean it would hide the pregnancy?

A. Yes, it did hide the pregnancy.

Q. Is that common or uncommon?

A. Uncommon.

Q. How did you determine this particular baby's head [72] was under the ribs?

A. By the x-rays.

Q. I am now handing you an article which has been marked Plaintiff's proposed Exhibit No. 1; will you identify the article and tell us what it is?

A. This is an x-ray taken of the abdomen of Miss Eleanora Gobert on 10/2/54 at Blackfeet Hospital.

Mr. M. O'Connell: Your honor, I move that

(Testimony of Dr. Edward L. King.)

Plaintiff's proposed Exhibit No. 1 be admitted in evidence.

The Court: Any objection?

Mr. J. J. O'Connell: To which we object, your honor, not only to the admission of the x-ray but to this whole line of testimony on the ground there has been no connection laid by this testimony and the defendant Chester Guith.

The Court: Well it is a circumstance here; overrule the objection for the present anyway. It may be admitted in evidence.

Q. (By Mr. M. O'Connell): I now hand you, doctor, Plaintiff's Exhibit No. 1, which you have stated to be an x-ray taken of Eleanora Gobert, would you tell us what you can observe in that x-ray relative to any pregnancy that might have existed at that time?

A. From this x-ray I can observe that there is a baby present in her abdomen, that the baby's head is up under, the ribs are in the top part of the x-ray, and the baby's head [73] is up under the ribs. The backbone is located along the same access as the patient's backbone, and also that shows the baby's buttox goes into the pelvic and from this I can predict we are going to have a breech delivery, which we of course had.

Q. Doctor, do you know who made out the birth certificate when the child was born on October 2nd?

A. The birth certificates are made out, at our hospital all deliveries are made out by our receptionist who is our record librarian and she makes

(Testimony of Dr. Edward L. King.)

the birth certificates from information we put on the clinical chart, that the doctor puts on the chart.

Q. Did you obtain any information relative to the paternity of this child?      A. I did not.

Q. You did not?

A. When she was in labor I asked her concerning the paternity of the child and she gave me no information whatever; this was at the time she was in labor.

Q. Did she at any time in the hospital give you any information relative to the paternity?

A. I do not recall any such information. Vaguely—well, I just don't recall enough that I could say.

Mr. M. O'Connell: That is all, you may cross examine.

Mr. J. J. O'Connell: No cross examination. [74]

The Court: Call your next witness.

Mr. Kerr: Gene Fopp.

### GENE P. FOPP

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Frank Kerr): Would you please tell the court and jury your name and occupation?

A. Gene P. Fopp, Special Agent, Federal Bureau of Investigation.

Q. Mr. Fopp, did you have occasion to investigate the case now under consideration?

(Testimony of Gene P. Fopp.)

A. I did, sir.

Q. And approximately what was the first date that this case or this matter was called to your attention?

A. It was called to my attention either on October 11th or October 12th by Dr. King, and I went up and investigated on October 12.

Q. You went up to the Reservation on October 12?

A. Yes.

Q. On the day of October 12 would you please name the parties whom you talked to?

A. I talked to Chester Guith, the defendant. [75] I talked to Eleanora Gobert, her mother and father, and Dr. King, as I recall.

Q. And that was on?

A. On the 12th.

Q. On the 12th day of October?

A. Yes, sir.

Q. At what time did you talk to these persons, Edward Gobert and Guith and Eleanora, approximately what time of the day?

A. On the 12th I first talked to the parents of the girl, Edward Gobert No. 2 and Roselle, Mrs. Roselle Gobert, and then at 11:50 on the 12th I talked to the defendant, and then returned, incidentally I also talked to the girl before I talked to the defendant, then in order to clarify information as furnished by the defendant I returned on the same date and talked to all the Guiths concerned in this matter.



(Testimony of Gene P. Fopp.)

Mr. J. J. O'Connell: Guiths or Goberts?

A. All the Goberts; I am sorry.

By Mr. Kerr: Your honor, that is all we have of this witness but we would like to have permission to call him later. We are laying the foundation for another witness at this time.

The Court: Very well, you may excuse him for the time being. Call your other witness. [76]

Mr. Kerr: Have you any questions?

The Court: Any cross examination at this time?

Mr. J. J. O'Connell: No.

Mr. Kerr: Mr. Ed Gobert.

#### EDWARD GOBERT No. 2

was called as a witness by plaintiff, and having been first duly sworn, testified as follows:

##### Direct Examination

Q. (By Mr. Frank Kerr): Will you please tell the court and jury your name and occupation?

A. Edward Gobert No. 2. Edward M. Gobert No. 2.

Q. What do you do, Mr. Gobert?

A. We live on a ranch.

Q. Where is the ranch?

A. On Seville Flat.

Q. Where is that in relation to Cut Bank?

A. It is about 10 miles out of Cut Bank.

Q. Is your ranch on the reservation?

A. Yes.



(Testimony of Edward Gobert No. 2.)

Q. Do you know where the Chester Guith ranch is?

A. Just about a quarter of mile west of us.

Q. Quarter of a mile west? A. Yes. [77]

Q. Are you familiar with the boundaries of the Blackfeet Indian Reservation? A. Yes.

Q. Do you know of your own knowledge whether or not the Guith ranch is within the confines of the Blackfeet Indian Reservation? A. Yes.

Q. Is it? A. Yes.

Q. Are you an Indian yourself, sir?

A. Yes.

Q. Which tribe? A. Blackfeet.

Q. And is Eleanora Gobert, the young lady just on the stand, I believe you saw her, is she your daughter? A. Who?

Q. Is Eleanora Gobert your daughter?

A. Yes.

Q. Has she lived with you up until this time at home? A. Yes.

Q. Now, Mr. Gobert, I am going to ask you to think back and try to recall in the fall of 1954 do you remember when your daughter had the child?

A. Yes.

Q. Now after the birth of this child did you have a [78] conversation with Mr. Fopp?

A. Yes.

Q. Did you hear Mr. Fopp testify just a moment ago and he testified that was the 12th of October; now can you place the time of this conversation by any events as to the approximate date?

(Testimony of Edward Gobert No. 2.)

A. You mean the time of the day?

Q. No, I was thinking more of the day, Mr. Fopp said that he talked to you on the 12th, did you talk to Mr. Fopp on the 12th?      A. Yes.

Q. Now on that same day—well, let me withdraw that question and ask it another way—On the day of the 12th did you have any occasion to talk to the defendant Chester Guith?

A. Well he came up to my place.

Q. What time of day was that?

A. Oh, it was late in the afternoon.

Q. It was late in the afternoon?      A. Yes.

Q. And who was present?

A. A boy of mine.

Q. Where in location to your house proper were you at the time?      A. At the barn.

Q. You were at the barn and your boy was present, how [79] old is your boy?

A. 10 years old.

Q. Was there any conversation at that time between you and the defendant Chester Guith?

A. Yes.

Q. Would you please tell us what that conversation was?

A. Well he come into my barn crying, oh, like a baby and come in there and he says he didn't think he would ever have to come to me and apologize like the way he did, he said he didn't know whatever made him do that.

Q. At the time he said that did he illuminate

(Testimony of Edward Gobert No. 2.)

that, did he make it any clearer what he meant by that?

A. Well for what he did he says.

Q. Well was there any other conversation?

A. Well he was, he says he didn't know what ever made him do that, here he says I always admired the way you raised your daughters and he says now a s b like me comes along and spoils it.

Q. And was there any other conversation had that day?

A. Well he went on begging me to, well, he says that his wife he was trying to keep it from his wife, if his wife got hold of it she would get him.

Q. And was anything else said regarding this incident at that time?

A. Oh, he stood around there bawling like a baby. [80]

Q. Anything else?

A. And then after he got over that he got asking me different things that was plumb out of the question.

Q. Well about this same time did you see Mr. Guith on any other time in this same period?

A. If he came back?

Q. Yes, did he come back?

A. Yes, the next day he came back again and he says that, he asked me to take the baby to Helena and adopt it out and put the baby in the Orphans Home and I told him that was a darn hard thing to do and the baby was one of the family

(Testimony of Edward Gobert No. 2.)

and we just couldn't take her and throw her away.

Q. And did he say anything else?

A. He said to find out how much it would cost and he would give me the money and then he wanted me to go in and talk to my wife about it.

Q. Was anything further said?

A. Oh, he talked about different things after that.

Q. Now which day was that?

A. That was the next day.

Q. Where was that conversation, where did that conversation take place?

A. Right out by the house and in the yard.

Q. And was anyone else present?

A. No, there was nobody there; my family was inside. [81]

Q. Could they hear? Were they within hearing range?

A. No, I wouldn't know whether they could hear or not.

Q. Now Mr. Fopp came up on the 12th and that would be the first conversation and this one we just finished with would be on the 13th, it was the following day? A. Yes.

Q. Now were there any more conversations?

A. Yes, he came back again and he wanted——

Q. When did he come back again?

A. The next day.

Q. So that would be the 14th?

A. He wanted me to go around to the neighbors and tell the neighbors——

(Testimony of Edward Gobert No. 2.)

Q. Excuse me, I want to ask you a question. Where did this third conversation on the 14th take place?

A. Right out around the house in the yard.

Q. Anybody else present?

A. No, nobody right there, and my wife didn't want him inside, so she told me to go out there and talk to him.

Q. What did he say?

A. He asked me to get in the truck with him and go around to the neighbors and tell them this was not true, that he was doing this to protect Nora and himself.

Q. Was that all the conversation at that time?

A. I told him that I wouldn't do it because I would [82] be just making a damn liar out of me.

Q. Was anything else said?

A. No, that was all.

Q. Now did you have any conversations with Mr. Guith in regard to the baby since that time?

A. No.

Q. Has your daughter ever been married?

A. No, no, she never has.

Q. Has she ever lived with another man in a state of common law marriage or as man and wife?

A. No, we have never let her run around and whenever she went to show we took her.

Q. Has she had any dates with boys to your knowledge?      A. No.

Q. Had she ever gone to town with other groups of girls?



(Testimony of Edward Gobert No. 2.)

A. No, she hardly ever goes to town; she never cared about going to town.

Mr. Kerr: That is all on direct.

### Cross Examination

Q. (By Mr. J. J. O'Connell): Now, Mr. Gobert, you said you were familiar with the Blackfeet Reservation? A. Yes. [83]

Q. Do you know whether or not the Guith ranch is Indian Country?

A. Yes, it is on the Reservation.

Q. How do you know?

A. Well Cut Bank Creek is the boundary, and Birch Creek on the south side, and Canadian boundary.

Q. Do you know whether it is deeded land or not?

A. I don't know whether it is deeded land or not.

Q. Now you had a conversation with Mr. Fopp on October 12, 1954? A. Yes.

Q. How do you remember that particular day?

A. Well I remember the day when he came.

Q. I know, but how do you remember. I know you remember it but what do you tie it up with, what relationship, what connection and so on, any particular way you remember it was October 12th?

A. I remember the date he came; it was October 12th is the only thing I know about it.

Q. That was the day he came? A. Yes.

Q. Now you said it was on that day on the 12th



(Testimony of Edward Gobert No. 2.)

that Chester Guith came alone and talked to you the first time?       A. Yes, the first time.

Q. As a matter of fact relations between you and Guith up [84] until that time had been very friendly, isn't that correct?

A. Well, yes, I have always treated him I thought he was a good friend of mine.

Q. I mean you interchanged situations as far as the ranch is concerned and gone over there for help and assistance and things of that kind, isn't that right?

A. Yes, I have worked for him and I have went up there.

Q. Now you said he came in crying like a baby?

A. Yes.

Q. Was he crying when he got to the house?

A. No, in the barn.

Q. Oh, in the barn; well, was he crying when he got there?       A. Well, yes.

Q. Were there tears in his eyes?

A. Yes.

Q. What did he tell you he was crying about?

A. He was crying because he had to come in and apologize to us.

Q. Because he had to come and apologize to you?       A. Yes, for what he did.

Q. Now did he say that Mr. Fopp had been to see him?       A. Yes.

Q. He told you that Fopp had been to see him?

A. Yes. [85]

(Testimony of Edward Gobert No. 2.)

Q. Now didn't he as a matter of fact tell you that it was a lie?      A. What?

Q. Didn't he as a matter of fact tell you this accusation made against him was a lie?

A. No, he didn't.

Q. Didn't you tell him as far as you were concerned it was a lie?

A. As far as I was concerned it was a lie?

Q. You didn't, you were sure he was the one that had done it, is that right?      A. Yes.

Q. You didn't question the possibility of anybody else?      A. No.

Q. I mean did you refuse, did you refuse to go around the neighbors as he suggested and tell them it was a lie?      A. Yes.

Q. You didn't tell anybody up there that it was a lie?

A. No, I didn't tell them; I told them it was the truth.

Q. You didn't tell anybody that?

A. No.

Q. Now he said he had always admired the way you raised your kids; now you had had some difficulty with the kids?

A. Not that I know of.

Q. One daughter? [86]

A. One daughter, which one was that, that was my sister's daughter, wasn't it?

Q. You know better than I.      A. Yes.

(Testimony of Edward Gobert No. 2.)

Q. Did you have a daughter in a house of prostitution?      A. Prostitution?

Q. Yes.      A. No.

Q. Well you know what a house of prostitution is?      A. No, I never have.

Q. What?      A. Never have had any.

Q. You never had what?

A. What did you say.

Q. Well didn't you have a daughter who was in a house of prostitution?

A. House of prostitution, what does that mean; you will have to explain that?

Q. Well I think the most popular way I could put it most men describe it as a whore house?

A. No, I never did have a daughter in a whore house.

Q. A daughter by the name of Mrs. Jackson?

A. Mrs. Jackson?

Mr. M. O'Connell: I object to that line of testimony, your Honor. [87]

The Court: Yes.

Mr. M. O'Connell: Improper cross examination.

A. You mean to say that I had a daughter that was a whore or something like that?

The Court: I sustained the objection.

The Court: Cut out any further examination along this line; it has nothing to do with this.

Q. (By Mr. J. J. O'Connell): Now was there any mention, any mention of money on the 12th of October?

(Testimony of Edward Gobert No. 2.)

A. No, he said he didn't have any on the 12th of October.

Q. He didn't what?

A. He didn't have any.

Q. Guith said he didn't have any money?

A. I told him I wasn't after his money.

Q. Didn't you hire an attorney at Shelby about trying to get money out of Guith?

A. Not me.

Q. Who did?

A. My wife went down there and talked to him; I wasn't down there.

Q. What? A. I wasn't down there.

Q. But you know your wife went down?

A. No, I never knew she went down until after she got back. [88]

Q. Until after she came back? A. Yes.

Q. Didn't you go to Mr. Aronow in Shelby?

A. Pardon me?

Q. Didn't she go to Mr. Aronow in Shelby?

A. I guess she did.

Q. And the purpose of that was to get money out of Guith, isn't that right?

Mr. M. O'Connell: Objected to, your Honor, because this appears to be all hearsay of Mrs. Gobert.

A. I never was after Guith's money.

The Court: It is so far as this witness is concerned certainly. Are you going to object to it?

Mr. M. O'Connell: Yes, sir.

The Court: Sustain the objection.

(Testimony of Edward Gobert No. 2.)

Q. (By Mr. J. J. O'Connell): You personally never talked to Mr. Aronow at any time?

A. Never have.

Q. Never have, never talked with him about getting any money from Guith? A. No.

Q. Did you talk to Guith about paying any money? A. No.

Q. And when did this discussion come up in which he [89] said he had no money?

A. Well he come in there crying and he said he didn't have no money; that is what he told me, but he wanted to get me to take the baby to an Orphans home.

Q. I mean was there discussion with him about the kind of property he had at that time?

A. No.

Q. You didn't discuss with him how much real estate he had, how much farm machinery?

A. No, I was not asking for no money at all.

Q. What was your reaction towards Mr. Guith inasmuch as you felt he was guilty of this?

A. Well the way I figured I think he should be punished.

Q. You said what?

A. I think he should be punished the same as anybody else; I am not after his money or anything.

Q. Did you protest to him about what he had done? A. No.

Q. Didn't try to strike him or anything?

A. No, that isn't my habit.

(Testimony of Edward Gobert No. 2.)

Q. Did he say what Orphanage he wanted this baby taken to?      A. He didn't say.

Q. He didn't say, and there were just you and he present, is that correct?

A. The boy when he wanted to take the baby to an [90] orphanage; just him and I was out there, my family was inside.

Q. Then he came back again on the 14th of October, is that correct?

A. Yes, he came the 12, 13 and 14th.

Q. On the 12, 13 and 14th he came around?

A. Yes.

Q. And that is when he wanted you to get in the truck with him and go around and tell the neighbors it wasn't true?      A. Yes.

Q. Do you remember whether or not he told you he was being made a goat for something he hadn't done?

A. No, he said he wanted to protect himself and he wanted to protect Eleanora; he said he wanted to stop the talk that was going around.

Q. He wanted to stop the talk going around?

A. Yes.

Q. Now your testimony is your daughter has never been out with other boys?

A. Never has; we never allowed that.

Q. Do you know she goes into school in Cut Bank?

A. Yes; she comes right back on the bus.

Q. Well now she is in Cut Bank for some time?

A. Yes, we see that she goes to school.



(Testimony of Edward Gobert No. 2.)

Q. You say at any time she has never gone into Cut Bank on any other occasions except school?

A. No, not unless we take her.

Q. Unless you take her; she has never gone in with your other daughters?

A. No, we never allow the other daughters to go into Cut Bank either unless we are with them, very seldom.

Q. Did you say except very seldom?

A. Yes, very seldom the other girls ever went into Cut Bank.

Q. Well do they go to the theatre or go to show?

A. Yes, we take them in town to the show.

Q. Do they go to any dances?

A. We take them and wait for them to come out.

Q. Do they go to any dances? A. No.

Q. Do they go to any dances in the community hall there where you live? A. No.

Q. Do you know whether they have gone in with—you have a son by the name of Ralph—have they? A. Yes.

Q. Have they ever gone in with Ralph?

A. Yes, they go in with Ralph.

Q. How old is Ralph? A. Ralph is 21.

Q. He is 21 and he never lets them go around?

A. He said he wouldn't.

Q. He told you he wouldn't, but you haven't?

A. I know because I can trust him; I can trust Ralph any place.

Q. Does Ralph go out with girls?

(Testimony of Edward Gobert No. 2.)

A. Ralph is a married man and has three children.

Q. Did he go out with girls before he was married?

A. Before he was married I suppose he did.

Q. Are any of your daughters married?

A. Yes, I have two married in Seattle.

Q. Did they ever go out with anybody before they were married?

A. No, not until they became of age.

Q. Not until they became of age?

A. Yes, that is one thing we never did do is let our daughters run around loose.

Q. You have a daughter just slightly older than Eleanora?

Mr. M. O'Connell: Objected to, your Honor, as improper cross examination.

The Court: Well I don't know what he has in mind; he can answer the question.

Q. You have a daughter which is older than she don't you?

A. Yes, just a little bit older.

Q. Doesn't she and Eleanora go out together?

A. No. [93]

Q. They have never gone up to what they call the shacks?

A. Shacks, where is that?

Q. The cabin up in the mountains?

A. No, Eleanora never has went up there; never did go up there; the older girl went up there with a friend of hers, with Cruses.

(Testimony of Edward Gobert No. 2.)

Q. With who?

A. Cruse, he had a cabin up there in the mountains and she went up there and she was real good friends with their daughter and they always took care of her, Mr. Cruse and his wife.

Q. And Eleanora didn't go with her?

A. No, Eleanora always stayed with us.

Mr. O'Connell: That is all, your Honor.

The Court: Any redirect?

Mr. M. O'Connell: No redirect.

The Court: Have you got a short witness, one more?

Mr. M. O'Connell: Your Honor, plaintiff rests.

The Court: How many witnesses have you got, Mr. O'Connell?

Mr. J. J. O'Connell: I didn't get your question, your Honor.

The Court: How many witnesses will you have probably.

Mr. J. J. Connell: I would say we would have about six; there are only about two of those that would be of any length. [94]

The Court: We will have a problem to finish by Saturday.

Mr. J. J. O'Connell: Oh, yes, I think we will finish by then.

The Court: Well, we can call it a day and suspend.

Whereupon the court duly admonished the jury. Court adjourned at 5:00 p.m. on June 9, 1955. [95]

Court resumed, pursuant to adjournment, at 10:00 o'clock a.m. on June 10, 1955, at which time the jury, the defendant and counsel for plaintiff and defendant were present.

The Court: Good morning, ladies and gentlemen.

The Court: Now, gentlemen, are you ready to proceed. Mr. O'Connell?

Mr. J. J. O'Connell: Your Honor, I desire to make a motion which under the rules requires it be made outside the presence of the jury.

The Court: Ladies and gentlemen of the jury, we have some legal questions to talk over and will you please retire to the corridor and the Marshal will find some accommodations for you while this discussion is going on in here; it is necessary you be outside of the hearing of what goes on in the courtroom.

(Whereupon the jury retired from the courtroom.)

The Court: Very well, Mr. O'Connell.

Mr. J. J. McConnell: May it please the court. Comes now the defendant and moves the court for a judgment of acquittal on the evidence on the following reasons:

1. That the Government has failed to prove completely that the Guith ranch at which the crime alleged at the time of the indictment was allegedly committed is in Indian Country as alleged in the indictment.

2. That the Government has failed to prove the crime charged in the indictment in that there has

been no proof [96] of penetration of the female sexual organ of the prosecutrix in the case.

Oral arguments were made by counsel for the defendant and by counsel for the plaintiff.

The Court: I am satisfied that there isn't any merit in either contention in those motions and in order to save time I will overrule the motion and you may bring in the jury.

The jury was returned to the jury box.

The Court: Mr. O'Connell, you may proceed with your statement to the jury.

Mr. J. J. O'Connell made a statement of the defense to the jury.

Mr. J. J. O'Connell: Call Mrs. Lillian Guith.

### LILLIAN GUTH

was called as a witness for the defense and having been first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. J. J. O'Connell): Now, Lillian, will you speak up loudly enough so that the jury will be sure to hear you and the court will be sure to hear you and the counsel back here at the table and talk to the jury so they can hear your story. Will you state your name, please?

A. Lillian Guith. [97]

Q. And where do you reside, Lillian?

A. About 10 miles west of Cut Bank.

The Court: Mr. O'Connell, she must talk louder: the jury must hear her.

Mr. J. J. O'Connell: Lillian, you will have to talk up and don't be afraid to talk up and try to



(Testimony of Lillian Guith.)

talk at least as loudly as I am so that they can hear you.

Q. (By Mr. J. J. O'Connell): I think you said you reside 10 miles west of Cut Bank?

A. Yes.

Q. Are you related in any way to the defendant Chester Guith? A. Yes, wife.

Q. You are his wife?

A. Yes.

Q. And for how long have you and he been married? A. 13 years.

Q. What has been the nature of your marriage?

A. We have been both happy.

Q. You have both been happy, I mean have you had any difficulties with your husband, Mr. Guith, as far as any other women are concerned? Infidelity or anything of that kind? A. No.

Q. Now you were present and sitting in the court room here all day yesterday while the testimony was produced by the [98] Government, were you not? A. Yes.

Q. And you heard all the testimony that was given? A. Yes.

Q. Now calling your attention to January the 9th in 1954, which is the date alleged in the indictment of the offense here and which is the date adduced in the proof by the government as the date of this alleged offense, can you recall the date of January 9th, 1954? A. Yes.

Q. Will you tell the jury how you recall that date?



(Testimony of Lillian Guith.)

A. Well since this matter came up we started wondering what we did on January 9th and tried to check on it and I have always kept a diary and I looked in my diary on January 9th, 1954, and I see what we done that day.

Q. For how long have you kept a diary, Mrs. Guith?

A. Ever since we have been married.

Q. Ever since you have been married?

A. Yes.

Q. And how have you kept that diary?

A. I write in it every day things of interest to us.

Q. Was there any particular reason why you kept a diary?           A. No.

Q. I mean did you want it for any particular purpose or was it for your amusement or for your information? [99]

A. Just because I started writing in it and it seemed interesting to read each year what we done.

Q. Do you recall whether you kept that diary in a one year diary book or a five year diary book or over what time?

A. The one for 1954 was a five year diary book; when I first started I just wrote on a notebook.

Q. You will have to speak up.

A. My first diary was just a notebook and this last diary it is a 5 year diary.

Q. Lillian, showing you what has been marked for identification as Defendant's Exhibit 2, I will ask you if you will tell the jury what that is?

(Testimony of Lillian Guith.)

A. This is my 5 year diary.

Q. And is this the diary that has been kept by you all the time indicated in there?

A. Yes, it is.

Q. And is all of the handwriting contained in there, is that your handwriting? A. Yes.

Q. Will you tell the jury what five years this diary covers? A. '51, 51, 52, 53 and 54.

Mr. J. J. O'Connell: We offer the exhibit.

Mr. M. O'Connell: Your honor, may we have a brief recess to look this over? [100]

The Court: Yes. We will take 10 minutes recess. (10:35 a.m.).

Court resumed, pursuant to recess, at 10:45 a.m. at which time the defendant, the jury and the counsel for plaintiff and defendant were all present.

The Court: Well, if you haven't had sufficient time to examine it, you can look at it during the noon hour.

Mr. M. O'Connell: We have had sufficient time, your honor. I would just like to ask the witness a couple questions about that diary.

The Court: Very well.

Q. (By Mr. M. O'Connell): Mrs. Guith, when in the day did you make entries in this diary?

A. I beg your pardon.

Q. When did you make the entries in this diary?

A. You mean for the past day usually; well, I, like for today I make that entry tonight and if I didn't think of it tonight, I would do it tomorrow morning.

(Testimony of Lillian Guith.)

Q. What sort of pen do you use?

A. Sometimes a Schaeffer fountain pen or ballpoint or anything I pick up.

Q. How many pens do you have?

A. I have about four ballpoints and a Schaeffer fountain pen; they are usually laying on our writing desk. [101]

Q. You have about four ballpoints and a Schaeffer?  
A. Yes.

Q. Which do you use the most?

A. Both of them.

Q. Which did you like the best?

A. The Schaeffer fountain pen is usually dry.

Mr. M. O'Connell: That is all I have, your honor, and I have no objection to the admission of defendant's proposed Exhibit No. 1.

The Court: Very well, it may be received in evidence.

Q. (By Mr. J. J. O'Connell): Calling your attention to Defendant's Exhibit No. 1 and calling particularly your attention to the entry made on January 9th, 1954, did you make that entry?

A. Yes.

Q. And was that made of your own knowledge from your own knowledge?  
A. Yes.

Q. You had knowledge of the facts?

A. Yes.

Mr. J. J. O'Connell: Your honor, may I read the entry to the jury?

The Court: Yes.

Mr. J. J. O'Connell: The entry in the Defend-

(Testimony of Lillian Guith.)

ant's [102] Exhibit No. 1 brings the years on down, '50, 51, 52, 53 and 54, and on January 9th, 1954, the entry reads: "Us 4 went to town. LeRoy & Chet went to Basketball game Shelby and C. B." C. B. it says rather than Cut Bank. Then goes on and says: "C. B. won".

Q. And you made that notation, do you remember about when you made it?

A. It was probably the next day, or one or two days after.

Q. You think you made it the next day or one or two days after?      A. Yes.

Q. I want to ask you did you make that notation after your husband had been charged with this crime?

A. No, because I keep my diaries up.

Q. You keep the diary up, do you remember about when your husband was charged with this crime, when was the first time he was ever accused of it?

A. It was the last of October.

Q. In October of '54?      A. Yes.

Q. Now in that diary you say that us 4 went to town, when you say us 4 went to town, whom do you mean?

A. Chet, LeRoy, Linda and I.

Q. Speak up so the jury can hear you and don't run through them so fast. Who were the four? [103]

A. My husband, Chet, and LeRoy and Linda and myself.

Q. And by your husband "Chet" you mean the

(Testimony of Lillian Guith.)

defendant here, Chester Guith? A. Yes.

Q. Do you now recall about what time you went to town—Well, let me ask you before that do you remember about what time you got up that day?

A. Oh, around eight o'clock.

Q. About eight o'clock in the morning?

A. Yes.

Q. And then after eight o'clock what did you do?

A. We had breakfast and Chet and LeRoy went out and done chores.

Q. Do you know what Chet did after breakfast of your own knowledge?

A. I could see him through the kitchen window; they were feeding the cattle.

Q. And you say Chet and LeRoy, that is the boy?

A. Yes.

Q. Do you know about how long they took to feed the cattle? A. Oh, about an hour.

Q. About an hour do you know about how many cattle they had to feed? A. Around 40 head.

Q. About 40 head and it took about an hour to do that, about what time of day would you say they finished that job?

A. It must have been between ten and ten thirty.

Q. Between ten and ten thirty?

A. I suppose.

Q. Then after they completed that chore then what happened, tell the jury what happened?

A. We got ready and were going to go to town



(Testimony of Lillian Guith.)

and that is when my husband's brother came down to get one of his cows that came down there.

Q. And what is your husband's brother's name?

A. Clifford Guith.

Q. Clifford Guith and he came to your house about what time?

A. I didn't see when he came; he was there when we got ready to go to town; it must have been about ten thirty.

Q. Around ten thirty? A. Yes.

Q. Well about what time did you leave for town, if you know? A. Around eleven o'clock.

Q. Around eleven o'clock, and how did you go to town, by what conveyance? A. By car.

Q. Is that your husband's car? [105]

Q. Now who did the driving on that particular day? A. My husband, Chet.

Q. And that is the defendant here, Chester Guith? A. Yes.

Q. And do you remember what kind of a day it was?

A. It wasn't warm; it wasn't cold.

Q. And he and you and the two children went on into town, into Cut Bank? A. Yes.

Q. About how far is that?

A. About 10 miles.

Q. Do you know about what time you got into Cut Bank?

A. It would be about 11:30, I suppose.

Q. About 11:30 in the morning? A. Yes.



(Testimony of Lillian Guith.)

Q. And where did you first go in Cut Bank when you got there?

A. Went to the Postoffice and the children and I got off to get the mail before the postoffice closed on Saturday.

Q. The postoffice closed on Saturdays?

A. At 12:30 on Saturdays.

Q. At what time? A. 12:30.

Q. About what time did you leave the postoffice, if you know? [106]

A. Between 11:30 and 12:00.

Q. Yes, and then——

Mr. M. O'Connell: What time was that?

Q. They didn't get the answer, the Government counsel didn't get your answer what time did you leave the postoffice?

A. Between 11:30 and 12:00.

Q. And from the postoffice where did you go?

A. We went down to the Wagon Wheel Cafe.

Q. To the Wagon Wheel Cafe, is that a restaurant in Cut Bank? A. Yes.

Q. Is it located in the business district there?

A. Yes.

Q. Now where did your husband go if you know; was he with you?

A. He took the car down to Northwestern Service.

Q. You will have to speak up again. He took the car where?

A. To the Northwestern Service garage.

Q. And where did you next see him then?

(Testimony of Lillian Guith.)

A. Shortly before twelve he came up to the Wagon Wheel Cafe.

Q. Shortly before noon he, around noon he came to the Wagon Wheel Cafe? A. Yes.

Q. And he met you and the two children there?

A. Yes.

Q. And then did you eat there, did you have lunch there, dinner, as you may call it?

A. Yes, we did.

Q. About how long did that take?

A. Take about an hour.

Q. That by the time you were served and the time you ate it took about an hour, is that correct?

A. Yes.

Q. Are you sure, you feel very sure about that that it took about an hour?

A. It always does in a restaurant, you wait.

Q. Do you have any idea what time you got out of the Wagon Wheel Cafe, what time you left there?

A. I would say around one o'clock.

Q. Around one p.m. in the afternoon?

A. Yes.

Q. And was Mr. Guith with you, your husband with you between noon, about the time noon and the time you left there, and you left at one o'clock, was he there all that time? A. Yes.

Q. And he ate his lunch with you?

A. Yes.

Q. From the Wagon Wheel Cafe where did you go?

A. Down to the drug store and done some shop-

(Testimony of Lillian Guith.)

ping and [107] went to Safeway and picked up some groceries.

Q. Do you remember what drug store you went to?      A. Public Drug.

Q. Public Drug store in Cut Bank?

A. Yes.

Q. Was your husband with you when you went to the drug store?      A. Yes.

Q. Did you make some purchases there in the drug store?      A. Yes.

Q. From the drug store then where did you go?

A. Safeway store.

Q. The Safeway grocery store?      A. Yes.

Q. And was you husband along with you?

A. Yes.

Q. And what purchases did you make there?

A. Bought groceries for the following week.

Q. You bought groceries for the following week, now have you any idea, could you give the jury any idea of the time, what time that consumed about; for instance, what time was it when you finished shopping at the Safeway grocery store?

A. I would say between three and four.

Q. Between three and four? [108]

A. Yes.

Q. Were you in the drug store quite a long time?

A. About an hour.

Q. Is that a large drug store?      A. Yes.

Q. I mean it sells other things besides drugs, is that correct?      A. Yes.

(Testimony of Lillian Guith.)

Q. And your husband Chester Guith was with you all that time? A. Yes.

Q. Then when did you pickup the car or do you know when the car was picked up?

A. He went back to Northwestern Service and got the car while I stayed down at the Safeway store.

Q. Did he come back to the store with the car?

A. Yes.

Q. And you put your groceries and that in the car? A. Yes.

Q. And then did you go home or did you go some place else?

A. Well we had some eggs to deliver to friends in town.

Q. You had some eggs to deliver? A. Yes.

Q. Do you know to whom you delivered those eggs?

A. To Mrs. Clyde Williams and Mrs. Don Presnell. [109]

Q. You will have to speak up louder.

A. Mrs. Clyde Williams and Mrs. Don Presnell.

Q. Do you know then after you got finished delivering the eggs to Mrs. Williams and Mrs. Presnell, do you know then did you go on home to your farm? A. Yes.

Q. And do you know about what time you got to the farm?

A. Between five and five thirty.

Q. Between five and five thirty, did you have dinner or supper then? A. Yes.

(Testimony of Lillian Guith.)

Q. And I note in the diary that you say your husband and LeRoy went to the basketball game?

A. Yes.

Q. And about what time did they leave?

A. Between seven thirty and eight.

Q. Between seven thirty and eight, were you awake when they got home that evening, that night?

A. I don't recall.

Q. Now you heard—well, they did come home that night? A. Yes.

Q. In the ordinary time after a basketball game would you say? A. Well, yes.

Q. Now do you know the complaining witness here, the [110] prosecutrix, Eleanora Gobert?

A. Yes.

Q. Have you seen her any number of times?

A. Yes.

Q. Has she come to your home and to your farm?

A. Yes.

Q. Would you say whether it was regularly or frequently or what?

A. Sometimes frequently, sometimes not too frequently.

Q. I mean did you of your knowledge see anything unusual or wrong going on between your husband and Eleanora Gobert at any time?

A. No.

Q. Have you asked you husband whether or not he committed this crime? A. Yes.

Q. Has he admitted or denied that he committed the crime?



(Testimony of Lillian Guith.)

Mr. M. O'Connell: Objected to, your honor, as hearsay.

The Court: Let her answer the question whether he ever denied it or admitted it.

Q. (By Mr. J. J. O'Connell): The question is has he ever denied or admitted this crime to you?

A. He denied it. [111]

Q. Has he always denied it? A. Yes.

Mr. J. J. O'Connell: That is all, your honor.

### Cross Examination

Q. (By Mr. M. O'Connell): Mrs. Guith, regarding this diary of yours and the references which you have made concerning your activities in town on January the 9th, in 1954, how long did it take you to reconstruct the events of that day?

A. That is the usual procedure every time we go to town.

Q. In other words, you are telling us what you did on that particular day because that is what you did every time you came to town on Saturdays, is that right? That is true, isn't it? Is it?

A. I was just thinking how you worded your question.

Q. I am just asking you if what you said you did when you went to town on January 9th was said by you just because you did the same thing every time you came into town? A. Yes.

Q. And you have no independent recollection of what you did on January 9th, is that right? In other words, you have testified what you did on



(Testimony of Lillian Guith.)

January 9th and you have told us the reason that you remember is because you told us that you did [112] the same thing that day that you always did when you went in to town?       A. Yes.

Q. But you don't specifically remember what you bought in the Public Drug on January 9th, do you?

A. Not offhand; I could check it back.

Q. What is that?

A. Not offhand; I can check it back in my account books.

Q. Do you have the account books with you?

A. No.

Q. Do you recall what you bought at Safeways on that day?

A. General line of groceries that I buy every weekend.

Q. But you have no recollection of what you did in the store that day, have you?

A. If there was anything unusual, I would have marked it down in my diary with anything the same on the happenings every day I don't write it down unless it is something extraordinary or unusual.

Q. What I am getting at, Mrs. Guith, you have given us a very careful accounting of your time on January 9th from the time you got out of bed at eight o'clock in the morning until your husband came home from the basketball game that night, that is right, isn't it?       A. Yes.

Q. And then you tell me that you can give that careful [113] accounting because it is what you do every week?       A. Yes.

(Testimony of Lillian Guith.)

Q. Now do you go to the Public Drug every week?      A. Yes.

Q. What do you do there?

A. If I don't buy anything, I buy my little girl a milkshake or something.

Q. But the Public Drug is one of your stops every week?      A. Yes.

Q. How often do you get to town?

A. Every week.

Q. How often does your husband get in town?

A. I don't keep track how often he goes.

Q. Does he go every time you go?      A. No.

Q. And who does he usually go with?

A. On weekends I go by myself during the summer when he is in the field.

Q. And who do you usually go with in the winter time?

A. My husband drives the car.

Q. And who else goes to town?

A. Usually both the children.

Q. Do any of your husband's relatives ever drive into town?

A. Not many, no. [114]

Q. But you do drive the car yourself?

A. Yes.

Q. Do you ever take anyone other than the children to town when you go?

A. If anybody wants to ride with me, yes.

Q. Who do you take most often besides the children?

(Testimony of Lillian Guith.)

A. Not anybody most often; I have occasionally taken my sister-in-law with me to town.

Q. You said that you know Eleanora Gobert, do you know her quite well?      A. Oh, yes.

Q. Did you ever hire her as baby sitter?

A. Yes.

Q. How often?      A. Not very often.

Q. Were you hiring her during the year 1954 as a baby sitter?

A. I think we did a few times.

Q. Did you hire her during the year 1953 as a baby sitter?      A. A couple times.

Q. And how did she get home when you did come home after she had been baby sitting?

A. We took her home.

Q. You took her home?      A. Yes. [115]

Q. Who took her home?

A. My husband took her home.

Q. Your husband?      A. Yes.

Q. What did you do at the Postoffice in Cut Bank on January 9th?      A. Got our mail.

Q. You what?      A. Got our mail.

Q. Do you remember what mail you got?

A. No.

Q. Do you remember seeing anybody in the post-office you knew?      A. No.

Q. You said that your husband denied committing an act of rape on Eleanora Gobert, did he volunteer this information to you?

A. I asked him.

Q. You asked him, how did you find out that

(Testimony of Lillian Guith.)

he had been charged?           A. He told me.

Q. He told you, isn't it true that you take the car quite often and go into town with the children leaving your husband at home?

A. Go in whenever I have to go in. [116]

Q. Quite often is it not?

A. Well, once a week isn't quite often I don't think.

Q. Do you go once a week?           A. Yes.

Q. And do you leave your husband at home on some of those occasions alone?

A. If he is home alone, he is usually in the field; when I go in alone is when he is in the field and has field work to do.

Q. Mrs. Guith, if I were to ask you if I were to hand you the diary which is in evidence and ask you what you did on January 7th and 8th and 10th, could you reconstruct events of the whole day from that diary entry?

A. You mean let me read what I wrote in there?

Q. Oh, yes, with the diary in your hand?

A. A lot of my entries I could tell you what I did every day, depending on how I wrote them up.

Q. Could you tell us what you did on every hour of the day as you did about the 9th?

A. Practically.

Q. You say that because you do the same things every day?           A. Just about, yes.

Q. And that is the reason you tell me?

A. Yes. [117]

Q. Is it true you do almost the same things every

(Testimony of Lillian Guith.)

day with some changing of pattern from day to day?

A. Naturally there would be some change, you wouldn't do everything on that same hour.

Q. And if there was a change in the pattern on a certain day, you couldn't tell me by looking at the diary entry, could you?

A. If there was anything very outstanding happening that day, I could because I would have marked it down.

Q. Do you usually go to town on Saturday?

A. Friday or Saturday.

Q. Friday or Saturday and what time do you usually leave the ranch for town?

A. Sometimes right at forenoon, sometimes I wait until after Linda's nap.

Q. Isn't it true you usually leave in the afternoon, or around noon?

A. However it may be, if I decide to let her have her nap first.

Q. What time does she take her nap?

A. Between one and three.

Mr. M. O'Connell: No further cross examination.

### Redirect Examination

Q. (By Mr. J. J. O'Connell): Lillian, do you drive the car to town usually in the winter months?

A. No.

Q. Why not?

A. The highways are usually slippery and it makes me nervous.

Q. Why don't you drive in the winter months?

(Testimony of Lillian Guith.)

A. Because the highways are usually icy and I am too nervous and I won't drive anywhere in the winter.

Q. And in the course of the pattern of your ordinary life you live as a farm woman, as a farm wife, in the winter months is it true or is it not that your husband usually goes to town with you?

A. He always goes to town with me in the winter time.

Q. Now the times you drive the car are in the nicer seasons of the year and when he is in the field, is that correct?      A. Yes.

Q. Now you were asked about your recollection of the things that went on on January 9th, 1954, and particularly with reference to the way you fixed the hours, I mean from the kind of life you live could you pretty generally set those [119] hours each day?      A. Yes.

Q. And the things that you have told the jury here about January 9th, 1954, and the hours are those as you remember them and recall them, is that correct?      A. Yes.

Q. And you usually go to town on what days?

A. Friday or Saturday.

Q. Friday or Saturday. do you know what day January 9th, 1954 was?      A. Yes.

Q. What day was it?      A. Saturday.

Mr. J. J. O'Connell: That is all.

#### Recross Examination

Q. (By Mr. M. O'Connell): Mrs. Guith, do you



(Testimony of Lillian Guith.)

remember what the condition of the roads was on that particular Saturday, January 9th?

A. I don't believe they were very bad.

Q. And during the winter when the roads are not very bad you quite often drive to town, do you not?

A. Only if the highways were bare and it had been chinooking. [120]

Q. I didn't hear you.

A. Only if it had been chinooking and if the highway was bare and dry.

Q. How far is your home from the highway?

A. Two miles.

Mr. M. O'Connell: That is all.

#### Redirect Examination

Q. (By Mr. J. J. O'Connell): Is that two miles to the highway, is that paved road or improved road?

A. No, it is just a graded road.

Q. And do you remember whether or not there was any snow on January 9th, 1954?

A. There was some, yes, some but I don't recall.

Q. Was there some snow, do you recall?

A. Yes.

Q. Do you have any idea, do you remember yesterday Miss Gobert testified that there was about a foot of snow, do you remember her testimony to that effect?

A. Yes.

Q. Would you say whether or not there was a foot of snow?

(Testimony of Lillian Guith.)

A. As I recall last winter I don't recall we had a foot of snow in January. [121]

Q. Was it less than that?

A. I think so.

Q. Do you remember the condition of the highway whether it was slick or what the condition of it was on January 9th? A. No.

Q. You do not? A. No, I don't recall.

Mr. J. J. O'Connell: Nothing further.

Mr. M. O'Connell: That is all.

Mr. J. J. O'Connell: Call Mr. John Flaget.

### JOHN FLAGET

was called as a witness for defense and having been first duly sworn testified as follows:

#### Direct Examination

Q. (By Mr. J. J. O'Connell): Will you state your name, please? A. John Flaget.

Q. And, Mr. Flaget, where do you reside?

A. Cut Bank.

Q. And what is your occupation?

A. Mechanic.

Q. What kind of a mechanic?

A. Automotive and tractor. [122]

Q. Do you operate a particular establishment in Cut Bank? A. Northwestern Service.

Q. And how long have you been with Northwestern Service? A. Since '49.

Q. Since '49? A. Yes.

Q. Do you know the defendant Chester Guith?

(Testimony of John Flaget.)

A. Yes.

Q. How long have you known Chester Guith?

A. Oh, somewheres in the neighborhood of 15 or 20 years.

Q. About 15 or 20 years; are you related in any way to Chester Guith? A. No.

Q. I didn't get your answer? A. No, sir.

Q. Can you recall or have you been asked to recall the date of January 9th, 1954?

A. Yes, I have.

Q. And in that connection I mean do I presume you keep records in your position in the Northwestern Service? A. Yes.

Q. And did you check those records?

A. Yes, sir.

Q. And particularly with respect to January the 9th, 1954? [123]

A. Yes, I did.

Q. Can you state whether or not from your recollection and from your knowledge whether or not Chester Guith came to your place on business on January 9th, 1954?

Mr. M. O'Connell: We object, your honor, as not the best evidence; he stated he checked the records and he is going to testify now without anything in his hand of what occurred on January 9th, 1954, from information he gathered from his records.

The Court: He has no records with him?

Mr. M. O'Connell: Not the best evidence, no proper foundation.

The Court: Sustain the objection.

(Testimony of John Flaget.)

Q. (By Mr. J. J. O'Connell): Mr. Flaget, showing you what has been marked for identification purposes as Defendant's Exhibit No. 3 I will ask you if you can tell the jury what that is?

A. It is a work order for repairs and work from the Northwestern Service.

Q. And did you personally make that record?

A. Yes.

Q. Is that record in your handwriting?

A. Yes, it is.

Q. And made and prepared by you in the regular course of business? [124]

A. Yes.

Q. And for whom is that work order made?

A. Chet Guith.

Q. Is that Chester Guith the defendant here?

A. Yes, sir.

Q. And did that involve repairs on the car of Chester Guith? A. Yes.

Mr. J. J. O'Connell: We offer it in evidence, your honor.

Q. (By Mr. M. O'Connell): Mr. Flaget, what did you do with the originals of these orders?

A. We have them in the shop.

Q. You have them in the shop? A. Yes.

Q. And this is a carbon copy, is it not?

A. Yes.

Q. Is it a second carbon? A. Second, yes.

Q. Or first carbon?

A. First carbon; it is the number two copy.

Mr. M. O'Connell: I will object to the introduc-

(Testimony of John Flaget.)

tion of this, your honor, on the ground it is not the best evidence; it is secondary evidence, and further for the reason portions [125] of it are illegible and particularly the date; the date appears to me as being either the 8th or 9th.

The Court: It is a very serious question whether it should be permitted to go in evidence.

Mr. J. J. O'Connell: Your honor, there is an original in existence.

The Court: Well this carbon copy even though it is a carbon copy it is so faint it is almost indistinguishable, that date.

Q. (By Mr. J. J. O'Connell): Johnny, why don't you have the original; why don't you have it here rather than the carbon?

A. I wasn't asked to bring the original.

The Court: Where is the original?

A. It is in the shop.

The Court: Why didn't you bring it?

A. I didn't; I wasn't asked to bring it.

The Court: Why did you bring a faint carbon copy like that when you have the original in your office?

A. That is Mr. Guith's copy.

The Court: Oh, you got that from Mr. Guith?

A. That is what he got when he had the job done.

The Court: I will sustain the objection.

Q. (By Mr. J. J. O'Connell): Johnny, without referring to your records and so on [126] can you recall January 9th, 1954?

A. Parts of it, yes.

(Testimony of John Flaget.)

Q. And do you know of your own knowledge whether or not Chester Guith came to Northwestern Service business establishment which you operated on January 9th, 1954? A. Yes, I do.

Q. Can you recall what time of the day he came there? A. Shortly before noon.

Q. Shortly before noon?

A. I would say between eleven and twelve.

Q. Between eleven and twelve o'clock of that day? A. Yes.

Q. Is there anything that fixes the time in your mind?

A. Yes, I didn't have time to work on it, that is, complete it before dinner.

Q. Did he bring his car for repair?

A. Yes.

Q. And did you repair it on that day?

A. Yes, I did.

Q. Do you know or do you remember about what time he picked the car up?

A. I don't remember exactly what time, in the afternoon sometime.

Q. In the afternoon sometime? A. Yes.

Q. Do you remember whether it was in early afternoon or midafternoon or late afternoon?

A. That I couldn't say.

Q. You just couldn't say, would it be possible for you to obtain and get to us here a copy of the original of this order or this invoice?

A. I could, yes. I don't know how long it would take. My wife is in the shop and I don't know



(Testimony of John Flaget.)

whether she could find it herself or not.

Q. But you will try, you will make an attempt so we can have it for the benefit of the jury here and the court? A. Yes, I will.

Q. In connection with this case were you visited by any official of the Government, the plaintiff in the case?

A. Yes, I was, Mr. Fopp, I believe.

Q. Is that Mr. Gene Fopp? A. Yes.

Q. And did he represent himself to you to be an agent of the United States Government?

A. Yes, he did.

Q. Did he tell you the department to which he was attached?

A. That I wouldn't say.

Q. Did he ask you in connection with this case whether or not Mr. Guith had been to your place on January 9th, 1954? [128]

A. No, he didn't.

Q. What did he ask you about the case?

A. He inquired whether Mr. Guith's battery charger was in the shop for repair at somewheres in that neighborhood.

Q. And how long ago was it that Mr. Fopp came to you? A. Two or three weeks ago.

Q. Two or three weeks ago and it was the questions he ask you whether or not the Guith's battery charger was there? A. Yes.

Q. Did you give him the information that he wanted? A. Yes.

Mr. J. J. O'Connell: That is all.

(Testimony of John Flaget.)

Cross Examination

Q. (By Mr. M. O'Connell): Mr. Flaget, what information did you give Mr. Fopp?

A. That the battery charger came in approximately the 5th of January.

Q. The 5th of January? A. Yes.

Q. Was it there at the time?

A. At which time?

Q. At the time Mr. Fopp talked to you?

A. No. [129]

Q. How long did it stay in the shop?

A. From somewhere March, in the middle of March.

Q. You had it from January 5, 1954, until the middle of March 1954, is that right?

A. Yes.

Q. Can you recall who came into the shop the 7th of January 1954? A. Who came?

Q. As to who came in?

A. You recall everybody that came in?

Q. Well everybody other than ones who maybe drop in every day?

A. Well not necessarily without looking it up who came in.

Q. That would go for any other day too, would it not, in January of 1954?

A. Not necessarily.

Q. Will you explain that answer, not necessarily?

A. If there is something special a person could remember.

(Testimony of John Flaget.)

Q. You don't mean to tell me it is unusual to bring a car to a garage just before noon and you could not fix it before lunch, that happens quite often, doesn't it?      A. Not too often, no.

Q. Do you do much work on cars?

A. Quite a little, more on tractors than I do on cars. [130]

Q. Did anybody bring anything to you on the 7th or 8th or 10th and you had to tell them that you couldn't get to it that day?

A. On the 7th I had just got some help; on the 7th is when I worked on the battery charger.

Q. Do you remember anybody that brought a car in that you could not work on on that particular day?      A. On the 7th.

Q. Yes.      A. No.

Q. On the 8th?      A. No.

Q. Do you remember any cars you worked on on the 7th, 8th or 10th?

A. Yes, I can remember one I worked on.

Q. Which car was that?

A. '47 Chevrolet that belongs to Northwestern Service.

Q. Belonged to Northwestern Service?

A. Yes.

Q. What day did you work on that?

A. On the 7th I didn't myself, no, but the man that I had working there did.

Q. You remember that because you just hired a new man that day?      A. Yes. [131]

Q. And was that the first car he worked on?

(Testimony of John Flaget.)

A. Yes.

Q. You watched him pretty close, is that right?

A. I was at the time.

Q. To see that he knew what he was doing?

A. Yes.

Q. And that is what makes that stand out in your memory?           A. Yes.

Q. But you can't remember any other cars?

A. Not those two special days.

Q. Didn't you tell Mr. Fopp on this visit which you have referred, Mr. Fopp being the Special Agent for the Federal Bureau of Investigation, didn't you tell him that you kept no records?

A. No, I did not.

Q. Did you tell him you kept no records with reference to the battery charger?

A. I told him that anything less than an hour's work there wasn't usually a work order made on it.

Mr. M. O'Connell: Nothing further.

### Redirect Examination

Q. (By Mr. J. J. O'Connell): Now, John, if somebody came in and asked you if, say, [132] Mr. Ralph Schell came into your plant on Friday, January 8th, picking out a specific person and so on, could you recall that tying it up with some matter?

A. If there was a matter to be tied up, I could recall it, yes.

Q. But you would have difficulty if somebody just asked you generally who came in on that particular day?           A. Yes.

(Testimony of John Flaget.)

Q. But if they picked out a specific person your recollection and memory would have something to do because you had a person to tie it to, is that right? A. Yes.

Q. Did I ask you if you had personally seen Mr. Guith on that day? A. You did.

Q. And in the recollection that you testified?

A. Yes.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: Nothing further.

Mr. J. J. O'Connell: That is all.

Mr. J. J. O'Connell: The only thing, your honor, I want to make an effort to get the original of this invoice and with the permission of the court I would like to recall the witness.

The Court: Very well, if he gets it here in time you may use it. [133]

Mr. M. O'Connell: Your honor, may I request at this time that the carbon copy of the invoice be kept in the custody of the Clerk of the Court until the original is produced?

The Court: Yes, you may retain that carbon copy for comparison.

The Court: Call your next witness, Mr. O'Connell.

Mr. J. J. O'Connell: I just wanted to make a notation of it, your honor. I will call Clifford Guith.

### ARTHUR CLIFFORD GUTH

was called as a witness for the defense and having been first duly sworn, testified as follows:

(Testimony of Arthur Clifford Guith.)

Direct Examination

Q. (By Mr. J. J. O'Connell): Will you state your name, please?

A. Arthur Clifford Guith.

Q. And where do you reside?

A. About  $10\frac{3}{4}$  miles west of Cut Bank.

Q. And are you related in any way to the defendant here, Chester Guith? A. Yes, sir.

Q. And what is your relationship?

A. Brother. [134]

Q. You are his brother? A. Yes, sir.

Q. And you, of course, know—you live near his farm? A. Yes, sir.

Q. About how far removed?

A.  $\frac{3}{4}$ ths of a mile.

Q. Now do you remember or can you recall the date of January 9th, 1954? A. Yes, sir.

Q. And how do you recall that date?

A. After this came up we started looking into what was done.

The Court: Can't you speak a little louder?

A. Yes, sir, I can.

The Court: Well speak up so the jury can hear you.

A. After this matter came up I started seeing what was done, what I could recall on that date.

Q. (By Mr. J. J. O'Connell): And what do you particularly recall about that date?

A. What I did, sir?

Q. Yes.

A. Well after breakfast I was running cattle



(Testimony of Arthur Clifford Guith.)

and I missed some cows and my cows were at my brother's place and I went to get them so I could get my cows and come home.

Q. Do you remember about—do you usually get up about the [135] same time each day?

A. Fairly close, yes, sir.

Q. And about what time is that?

A. Approximately eight o'clock.

Q. Around eight o'clock? A. Yes, sir.

Q. Can you recall about what time you went to your brother's place?

A. Yes, sir, I would judge about nine, nine thirty; it was in the morning.

Q. Between nine and nine thirty?

A. Yes, sir.

Q. About how long were you over there if you remember?

A. In the neighborhood of an hour, maybe a little over.

Q. About an hour? A. Yes, sir.

Q. I mean did you go over there to get cows or a specific cow?

A. Yes, sir, I went to get a cow.

Q. To get two cows or one?

A. There was a cow and a young heifer.

Q. And you were there about an hour, was your brother Chester Guith there then?

A. He was.

Q. Did you see and talk with him then? [136]

A. I did.

(Testimony of Arthur Clifford Guith.)

Q. Did he help you as far as the cows were concerned?      A. He did.

Q. Now can you recall anything else that took place on that morning?      A. Yes, sir.

Q. Well will you tell the jury what it was?

A. When I got my cows they are harder to run out away from a bunch, they are harder to cut out from a bunch and I had my brother help me, and when he helped me cut them out then he opened the gate for me so I could take them down the road, and as he opened the gate for me then he was ready to go to town.

Q. Did you see his wife, Lillian, and the children on that day?      A. Yes, I did.

Q. Did you have an opportunity to see whether or not they got into the car?      A. Yes, sir.

Q. Does your brother have more than one car?

A. No, sir.

Q. What kind of car does he have?

A. At that time it was a '49 Chevrolet, slate grey color, slate grey.

Q. And were you there long enough to observe whether [137] or not he got into the car, Chester Guith?      A. Yes, sir.

Q. And were you there long enough to ascertain whether they drove away from the farm?

A. Yes, sir.

Q. And could you tell the jury about what time of the day that was?

A. Exact time, no, but estimated time I would say approximately ten ten thirty, somewheres in

(Testimony of Arthur Clifford Guith.)

that neighborhood. Now I never kept, there was no sense in keeping any exact time.

Q. Now did you see your brother any more that day?      A. No, sir.

Q. Do you recall a basketball game that evening?      A. I do.

Q. Did you see your brother at that basketball game?      A. I never went.

Q. You never went?      A. No, sir.

Mr. J. J. O'Connell: That is all.

### Cross Examination

Q. (By Mr. M. O'Connell): Do you recall any other basketball game played by Cut Bank that year? [138]      A. Yes, sir.

Q. What dates were they played on?

A. I don't know.

Q. You don't know the dates of any of them?

A. I am not a basketball fan; the reason I recall that date my brother asked me to go.

Q. Does he always ask you to go?

A. No, sir. Cut Bank and Shelby are rival teams and it is generally a good game and I don't care for basketball so I never went.

Q. When did you first hear about this charge against your brother?

A. On the date he was charged.

Q. What date was that?      A. I don't recall.

Q. You don't recall that?

A. No, sir, the date the man came for my brother I was in the field combining.

(Testimony of Arthur Clifford Guith.)

Q. How many people helped you recall these dates?      A. No one, sir.

Q. You just kind of, you said you just kind of recalled the events of the 9th; now can you sit there and recall what date you first heard this charge, the date he was charged you just said, what date was that?      A. I never said. [139]

Q. What?      A. I never said what date.

Q. I want to know what date it was; I would like to see you sit there and recollect it up like you recollected up these other things?

A. May I ask you one question.

Q. No, answer the question. Please answer my question.

A. I can't tell you the exact date.

Q. Can't you recollect it up?

A. No, sir, I can't.

Q. Well that is not nearly as long ago as January the 9th, 1954; in fact, it is about 9 months later; is it easier for you to recollect things that happen further back?

A. As far as I was concerned that date wasn't in question.

Q. How many times did you take off over to your brother's ranch to get cows in the last two years?

A. I wouldn't say how many times, possibly 15 times.

Q. 15 times; could you give us the times?

A. I could not.

Q. How come you could give us the date of the 9th of January?

(Testimony of Arthur Clifford Guith.)

A. Because we were talking about the basketball game between Cut Bank and Shelby.

Q. You talked about the game but you are not a fan? A. No, sir, I am not. [140]

Q. You are not interested?

A. Oh, yes, however I am not interested enough that I have gone.

Q. That you have what?

A. That I have gone to the games.

Q. You don't go see the games?

A. No, sir.

Q. By recalling the fact that there was a baseball game between Cut Bank and Shelby on that date can you recall the events of the date?

A. Yes, sir, it is the usual day, got up in the morning, fed my cows, missed a cow and heifer which went down to my brother's, got the cow and heifer and took them home and stayed home the rest of the day; it wasn't a good day; it wasn't a day to be out playing around; I am not that warm blooded.

Q. How about some of these other dates you went to get the cows, you can't remember any other date? A. Yes, sir.

Q. What are some of the dates?

A. July 4th.

Q. That would be fairly easy to remember?

A. Yes, it is.

Q. A little easier than January 9th I would say, wouldn't you? [141] A. I would.

Q. What conversations have you had with your

(Testimony of Arthur Clifford Guith.)

brother and your brother's attorney, Mr. O'Connell, regarding the events of January 9th?

A. I have spoke to the attorney very little.

Q. How many times?

A. I saw him this morning, I saw him last evening and that was I believe it. I walked from the hotel to the court room with him this morning; that was my contacts with the attorney.

Q. Did your brother ever tell you that he wanted you to recall events of January 9th?

A. Yes, sir.

Q. When did he first tell you that?

A. Sometime after he was charged, the fall of '54.

Q. And he helped you recall these events?

A. No, sir, he had no way of helping me except together we recollected, he and I thought of the basketball game; we recalled that because we had a slight wager on it and I lost.

Q. Still you don't remember what date he was charged?      A. No, sir, I don't.

Mr. M. McConnell: That is all I have. [142]

### Redirect Examination

Q. (By Mr. J. J. O'Connell): Do you remember how much you bet on the game?

A. 25c; that is our usual betting.

Q. And you can recall that because you tied it up with the game?      A. Absolutely.

Q. Now if somebody were to ask you to recall the events of October the 12th, 1954, a visit of Mr.



(Testimony of Arthur Clifford Guith.)

Fopp, the day could you tie up the events of the date of October 12th, 1954?

A. What I did through the day?

Q. Yes.

A. Absolutely if that was the day he was there.

Q. Well I mean just for the benefit of the jury and for counsel tell us what you did on October 12th, 1954?

A. My brother and I both own a combine and we combined together and we were combining grain on that date; we were picking up swaths with our combine and a friend of mine came out where we were working, Harry Rakman, he worked with us the year before and he came out to see what we were doing and we picked up these swaths and it was the end of the swaths and we took the combines home, then we took the pickups off and put the other reels on, then we went and cut some standing grain. [143]

Q. Now how do you recall those events on October 12, 1954.

A. Because I can show you very close to the exact spot where we were parked when Mr. Fopp came, or whatever his name is.

Q. You connect it up with some specific event like you do on January the 9th?

A. Yes, sir.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: No cross examination.

Mr. J. J. O'Connell: Call Jimmy Romsa.

## JIMMY ROMSA

was called as a witness for defense and having been first duly sworn testified as follows:

## Direct Examination

Q. (By Mr. J. J. O'Connell): Will you state your name, please? A. Jimmy Romsa.

Q. Now will you speak loudly enough, Jimmy, so that the jury will hear you and the court and counsel back here? Where do you reside?

A. About 6 miles west of Cut Bank.

Q. About 6 miles west of Cut Bank? [144]

A. Yes.

Q. Are you acquainted with the location of the Gobert farm? A. Yes, I am.

Q. Do you know where it is? A. Yes.

Q. Have you been on that farm?

A. I don't know if I have ever been on it but I go past it every other day.

Q. You go past it every other day?

A. Yes.

Q. Do you know the location of the Guith farm?

A. Yes.

Q. Now how long have you resided in that area?

A. About 12 or 13 years.

Q. Do you know Eleanora Gobert?

A. Yes.

Q. How long have you known her?

A. 4 or 5 years anyway.

Q. Have you had occasion to see her on any times.

A. I have seen her merely by accident but I don't think I have talked to her.

(Testimony of Jimmy Romsa.)

Q. You have never talked to her? A. No.

Q. Have you seen her in the company of any other boys? [145] A. Yes.

Q. And can you recall any occasion, any number of occasions?

A. I can name three times that I saw her, twice with boys and once without.

Q. Twice with boys and once without?

A. Yes.

Q. Do you recall about when those occasions were?

A. One of them was before the 9th and the other was after and the other I don't recall whether it was before or after.

Q. Was she alone with these boys?

A. Once she could have one sister with her.

Q. Once there could have been a sister with her, what about the other time?

A. The other time I don't think so.

Q. She was just with the boys herself?

Mr. M. O'Connell: Objected to unless this is nailed down a little better as to time and place, the times she was with the boys.

The Court: Yes, perhaps you should limit it to time and place of the occasions so there will be some way of looking into it on the part of the other counsel.

Mr. J. J. O'Connell: Your Honor, on direct examination yesterday both Mr. Gobert and Mrs. Gobert testified [146] she had never been out with boys on any occasion.

(Testimony of Jimmy Romsa.)

The Court: Yes, I think that was the testimony all right. Well, you can bring that up on cross examination.

Q. (By Mr. J. J. O'Connell): Can you for the benefit of the jury and court and counsel can you tie those occasions down to any particular day?

A. Not exactly the date but I can say whether it was before or after the 9th.

Mr. M. O'Connell: Just a moment. I will ask the witness to explain before or after what—the 9th of January?

Q. The 9th of January, 1954? A. Yes.

Q. When about did you see her before January the 9th, 1954? Just approximately if you can't, you know, if you can't give us——

A. It was in the month of December.

Q. In the month of December, 1953?

A. Yes.

Q. Then did you see her after January 9th, 1954? A. Yes.

Q. Do you know about approximately when?

A. Around the end of January or beginning of February.

Q. The end of January, 1954, or beginning of February, 1954? [147] A. Yes.

Q. Now you said there was an occasion in town when you saw her with her sister? A. Yes.

Q. Before we go over to that, on these two occasions you speak about were her mother and father with her? A. No.

Q. Was either her mother or father with her?

(Testimony of Jimmy Romsa.)

A. No.

Mr. M. O'Connell: Your honor, in view of the last two answers I am going to object to any further testimony along this line because it cannot serve to advise the court or jury in a case of this type as being incompetent, irrelevant and immaterial to attack the virtue or morality of the prosecutrix, and the fact now that in view of the Gobert's testimony that she had not gone out with boys as this was outside their province and they could be testifying to matters certainly only within their own knowledge and there is no showing here that Goberts had any knowledge that she was out with these boys. The question serves only for the purpose of impeachment and there is no foundation laid for impeachment, your honor.

The Court: Well we will let it stand as it is. It is a case for you to argue to the jury as to whether it has any value at all or not and if you can make any value out of it [148] or whether the Government can and I will let it stand as it is for what it is worth in view of the testimony given by the father of the prosecutrix yesterday.

Q. (By Mr. J. J. O'Connell): Now you told of an occasion——

The Court: Proceed with some other subject. If you have anything further, you can proceed.

Q. (By Mr. J. J. O'Connell): You told of an occasion you saw Eleanora Gobert and her sister in Cut Bank?

A. Yes.

Q. Do you know about when that was?



(Testimony of Jimmy Romsa.)

A. No, I can't say. I seen her and her sister walking down the street.

Q. Were they alone?

A. Yes, just the two of them.

Q. Do you know which sister it was?

A. Yes, the one older than her.

Q. The one just older than her?

A. Yes, she is one or two years older.

Q. And were they accompanied by the mother and father?      A. No.

Mr. J. J. O'Connell: That is all, your honor.

Mr. M. O'Connell: No cross examination.

The Court: The court will take a recess until 1:30 p.m. (12 noon, June 10, 1955.) [149]

Court resumed, pursuant to recess, at 1:30 p.m. on June 10, 1955, at which time the jury, defendant and counsel for both parties were all present.

The Court: You may proceed.

Mr. J. J. O'Connell: Call Chester Guith.

### CHESTER GUTH

defendant, was called as a witness, and having been first duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. J. J. O'Connell): Chester, will you speak up loudly enough so that the jury will be sure to hear you and the court and counsel at the table. Will you state your name, please?

A. Chester Guith.

Q. Where do you reside?



(Testimony of Chester Guith.)

A. About eight miles west of Cut Bank.

Q. And you are the defendant in the action of United States of America, Plaintiff, vs. Chester Guith, defendant?

A. That is right.

Q. How old are you Chester? A. 42.

Q. And you are married? A. I am.

Q. And how long have you been married? [150]

A. 13 years.

Q. You have been present of course all during the trial and have heard all of the testimony that has been adduced here?

A. That is right.

Q. Now calling your attention to the date January 9th, 1954, which is the date on which you allegedly committed the offense with which you are charged, can you recall the date of January 9th, 1954?

A. Yes.

Q. And why and in what manner do you recall it?

A. Well I have recalled it very strongly because I was charged with that crime and different things that occurred during that day.

Q. Did you discuss that date with your wife?

A. I did.

Q. Did you hear her testimony adduced here today?

A. I did.

Q. And would you testify substantially as to your actions on that day as she testified about them? Would you testify substantially the same about your actions on that day as Mrs. Guith testified about them, do you remember what time you arose on that day?

A. Approximately eight o'clock.

(Testimony of Chester Guith.)

Q. And after arising you naturally had breakfast? [151]      A. That is right.

Q. And what did you do after that?

A. I milked three cows and went out and fed 46 head of cattle.

Q. And will you describe just quickly and briefly the length of time it took you to feed those, that is to milk the cows and feed the cattle?

A. From an hour to an hour and a half, something like that, sometimes it took more.

Q. Why did it take an hour to an hour and a half?

A. Well in feeding the 46 head of cattle I was feeding baled hay and I had to drag the bales out of the corral and scatter it for the cows.

Q. What time do you think you finished or completed that job, what time that morning?

A. I would say between ten and ten thirty, something like that.

Q. Sometime between ten and ten thirty, was that something that you did usually every day?

A. That was an every day occurrence.

Q. So it is not difficult for you to recall that particular part of the day or your activity at that time?      A. No.

Q. Now after ten thirty what did you do?

A. My brother come down and he was there before I [152] finished the chores, and we visited and then he got a cow and heifer which got into my cattle.

(Testimony of Chester Guith.)

Q. And then you helped him get that out, is that it?      A. Yes.

Q. And then what did you do, get ready?

A. Well I was practically ready, all I did was put my coat jacket on and got ready for town.

Q. Ready to go to town?      A. Yes.

Q. And by town you mean Cut Bank, is that true?      A. Yes.

Q. Ordinarily how long does it take you to drive from your place to Cut Bank—let me ask you do you remember the kind of day it was?

A. Well it wasn't a warm day; it was a chilly day, I will put it that way.

Q. Was there any snow on the ground?

A. Yes.

Q. Do you have any idea about how much?

A. Offhand I would say approximately 6 inches, something like that.

Q. And you and your wife and the children got into the car, is that correct?      A. Yes.

Q. Have you any idea about what time that might have been? [153]

A. Oh, a little after about eleven o'clock I would say; now, I didn't look at the time about that.

Q. And then you proceeded on into Cut Bank?

A. That is right.

Q. And when you got in there where did you go?      A. To the Postoffice.

Q. And about how long were you in the Post-office?

A. I wasn't in the Postoffice.

(Testimony of Chester Guith.)

Q. What did you do when you went into the Postoffice?

A. I drove up to the curb and my wife and the children got out of the car and went into the Postoffice.

Q. And where did you go?

A. Down to Northwestern Service.

Q. The Northwestern Service? A. Yes.

Q. That is the establishment operated by Mr. Flaget who testified here previously?

A. That is right.

Q. About what time did you get down there?

A. Just before noon.

Q. Just before noontime? A. Yes.

Q. And what did you do down there?

A. I left the car outside and I went into the building and asked Johnny if he could work on the car. [154]

Q. What was wrong with your car?

A. Brakes.

Q. The brakes, you were having difficulty with the brakes?

A. Yes, they weren't working properly.

Q. I mean had that difficulty continued for some time?

A. Well, it was coming on gradually, yes.

Q. The brake fluid or was it wearing out?

A. Whatever was the matter there.

Q. About how long did you stay at the Northwestern Service?

A. Not very long. I just asked him if he could

(Testimony of Chester Guith.)

work on the car and then I left. I was there probably, oh, right offhand maybe five minutes approximately.

Q. Then from the Northwestern Service where did you go?      A. To the Wagon Wheel Cafe.

Q. Do you know about what time you arrived there?      A. About noon.

Q. Around noontime?      A. Yes.

Q. Do you remember? I presume you said.

A. Yes.

Q. You were there with your wife and the children?      A. That is right. [155]

Q. And do you know about how much time that consumed?      A. About an hour I imagine.

Q. So it was about one o'clock when you left the Wagon Wheel Cafe?      A. Yes.

Q. And then from there where did you go?

A. Well we left the Wagon Wheel and walked up the street and just kind of window shopping and then we went into the Public Drug.

Q. Were you in the Public Drug any time, any amount of time?

A. Well not too long. We were there a while looking around and my wife bought some things.

Q. And then did you make any purchases in the Public Drug that you can recall?      A. Myself?

Q. Yes.      A. Not that I recall, no.

Q. Recall any your wife made?

A. She came out with a sack, so I presume she purchased something, I don't know what.

(Testimony of Chester Guith.)

Q. Did you talk with anybody in the Public Drug?

A. Yes, I know all the majority of the people that work there and I generally visit with them in there.

Q. And from the Public Drug where did you go? [156]

A. Down to the Safeway.

Q. And did you and your wife make purchases there?

A. That is right.

Q. What?

A. Yes.

Q. Will you take your hand down?

A. Pardon me.

Q. Do you know about how long you were in the Safeway Store?

A. About an hour, a little over, something like that; I never kept track of it.

Q. And then from the Safeway Store where did you go?

A. Well we went back down town.

Q. Did you pickup your car that you left at the Northwestern Service?

A. Yes, shortly after that I picked up my car.

Q. Did you go and personally pick it up yourself?

A. I did.

Q. Have you any idea about what time of the day it was then?

A. I would say around four, something like that.

Q. Around four o'clock?

A. Yes.

Q. Then after you got in the car what did you do?

A. I went back and picked up my wife and the groceries. [157]



(Testimony of Chester Guith.)

Q. And from there where did you proceed?

A. Delivering eggs.

Q. And then after the delivery of the eggs you went on home to your farm, is that correct?

A. That is right.

Q. Do you know about what time you got there?

A. About five, I would say something like that, or quarter to.

Q. Did you have some chores to do after that?

A. Yes.

Q. And that took some time I presume?

A. Yes, I had the cows to milk and the cattle to feed.

Q. Did you have supper then?

A. Yes, before I did the chores.

Q. Oh, before you did the chores?

A. Yes.

Q. Then what did you do the rest of the evening, just as briefly as you can?

A. LeRoy and I got ready to go to town to the basketball game.

Q. Do you know what basketball game it was?

A. Cut Bank and Shelby.

Q. Is that the kind of a game or a game that would stand out in your mind?

A. Well they are the two outstanding teams or presumed [158] to be and it was a question who was going to win.

Q. Did you have any discussion that day when you saw Mr. Flaget in the Northwestern Service concerning the game?

A. Yes.

(Testimony of Chester Guith.)

Q. Do you remember what that was about?

A. I just asked him how he thought it was, who was going to win and he says Cut Bank and I bet him 50 cents they wouldn't.

Q. You bet him 50c Cut Bank wouldn't win the game; was there quite a bit of discussion about the game? A. Yes.

Q. Now then after the game where did you go?

A. Home.

Q. Do you know about what time you got home?

A. No, it would be a little after eleven I presume. I didn't pay any attention but as a rule the games let out at eleven, something like that.

Q. I want to ask you, you of course live on a farm, is that correct? A. Yes.

Q. Do you own that farm? A. I do.

Q. Does the United States own any part of it or have any reservation in it? A. Not any.

Q. It is land deeded definitely to you?

A. It is.

Q. And do you know how you acquired that land, that farm?

A. I bought the tax deed.

Q. From who? A. Glacier County.

Q. Now let me ask you on January 9th, 1954,—let me ask you first do you know Eleanora Gobert?

A. I do.

Q. How long have you known her?

A. I can't answer the exact year but she wasn't very big when I first knew her.

Q. Now I want to ask you on January the 9th,

(Testimony of Chester Guith.)

1954, did you see Eleanora Gobert? A. No.

Q. Did you see her at any time during that day?

A. No.

Q. Now you were present yesterday when she testified?

A. I was.

Q. Were you in the tool shed at your farm about twelve o'clock noon on January 9th, 1954?

A. No.

Q. You were where you have said you were and where you have testified previously? [160]

A. At the Wagon Wheel around twelve o'clock or a little after.

Q. Now she said that she talked to you in the tool shed at that time about the battery charger, do you remember whether she talked to you at that time about the battery charger?

A. Why no.

Q. She said you asked her how school was, is that true or false?

A. That is very false.

Q. Now she says that as she started to go out the door that you pulled her back, is that true or false?

A. Very false.

Q. She further testifies that you started trying to pull her clothes off as she tried to get away and you wouldn't let her go, is that testimony true or false?

A. Very false.

Q. Now she says you threw her on the ground and threw her down by the shelf on the ground?

A. That is false.

Q. Then she says that you started unbuttoning your overalls down the front?

A. That is false.

(Testimony of Chester Guith.)

Q. Then testifies that as I have it here that panties and brassiere were the only things she had on? A. That was false; she wasn't there.

Q. She wasn't there. Now she says that she had sexual intercourse, that you had sexual intercourse with her at that time, did you or did you not?

A. I did not.

Q. You were present while she testified about all the matters and I want to ask you whether or not you did any of the things on January 9th, 1954, that she accused you of on that stand yesterday?

Mr. M. O'Connell: Objected to, your honor, as too indefinite and uncertain, too broad a question. I think counsel could ask as to the different statements made by the prosecutrix on the stand, and that question he is asking now is too broad in scope, too sweeping.

The Court: The defendant heard her testimony yesterday and as to those material matters he may say whether they are true or false; he may testify. I don't think there is any great breadth to that. I will overrule the objection; he may answer the question.

Mr. J. J. O'Connell: Read the question.

(Question read.)

A. Absolutely not.

Q. (By Mr. J. J. O'Connell): Now she went on further and said that after this alleged occurrence on January 9th, 1954, that on three or four other occasions within a period of three or four [162] weeks after the occurrence on January 9th, 1954,

(Testimony of Chester Guith.)

that you again had sexual intercourse with her, is that testimony true or false?      A. Very false.

Q. Did you have sexual intercourse with her on those three or four occasions?      A. No.

Q. Now she stated that she was the mother of a baby and accused you of being the father, that she considered that you were the father of that baby, what do you have to say about that?

A. I am not.

Q. I want to ask you if you are willing to undergo a blood test, waive any of your constitutional rights in that connection in order to determine whether or not you are the father of the baby?

A. I will.

Q. Now you were present when her father, Edward M. Gobert No. 2, I think he described himself, when he testified?      A. Yes.

Q. Now he says that he testified that he talked with you on October 12, 1954, is that correct?

A. Yes.

Q. He said that you came to his home or to the jail, I think it was late on that day and that you had a conversation [163] with him?

A. I did.

Q. Now he also testified that you came there crying, bawling like a baby, is that right?

A. That is incorrect.

Q. During the course of that conversation did you cry?      A. I did.

Q. And why did you cry?

A. Because it hurt my feelings to think that



(Testimony of Chester Guith.)

he was accusing me of something I didn't do of that type.

Q. Now he also testified you apologized to him for what you had done to his daughter?

A. I did not.

Q. He said you said you were a s.o.b. because you had ruined her, did you make any such statement?      A. No, I didn't.

Q. Did you ask him to refrain from telling your wife?      A. No.

Q. So she wouldn't get wind of it?

A. No.

Q. Is that the same day that Mr. Gene Fopp, Special Agent for the F.B.I., talked with you?

A. That is.

Q. And did you tell your wife about that on that day?

A. I told her I believe it was the next day. [164]

Q. Told her what the situation was?

A. What I was accused of.

Q. Now Mr. Gobert testified that he saw you again on the following day on October 13th by his house; there were just you and he present?

A. That is right.

Q. And he said that you asked him to have the baby taken away to a Helena orphanage, is that true or false?

A. Would you repeat that question again?

Q. The material part of it that I am now asking you about is on October 13th by the house——

A. Yes.



(Testimony of Chester Guith.)

Q. And when only you and he were present and he said that you asked him to take the baby to a Helena orphanage? A. I did not.

Q. And was there any discussion about taking the baby to a Helena orphanage? A. No.

Q. Now on that occasion on October 13th was there any discussion about money?

A. Not that day.

Q. When was there a discussion about money?

A. It was the next day.

Q. On October the 14th?

A. That is right. [165]

Q. And did you see Mr. Gobert then again?

A. I did.

Q. And was that by his home again?

A. Yes.

Q. When only you and he were present?

A. That is right.

Q. Is that the occasion then that there was a discussion about money? A. That is right.

Q. And what was that discussion about money?

A. He said he thought he ought to have some money.

Q. Was that from you?

A. Well he was talking to me.

Q. Did he ask you for any specific amount of money?

A. No, because I told him I am the goat for somebody and I am not paying you anything.

Q. And on these occasions did you deny to Mr.

(Testimony of Chester Guith.)

Gobert that you had had sexual intercourse with his daughter?

A. I told him I was being made the goat for somebody.

Q. And did you or did you not deny it?

A. Well I denied it.

Q. Now on that occasion there was also some discussion about him getting in the truck with you to go around and tell the neighbors that this gossip wasn't true, was there such a discussion as that?

A. On the 13th?

Q. That was on the 13th?

A. That was on the 13th.

Q. Tell the jury what the nature of that discussion was?

A. I told him I was being made the goat for something I didn't do and I said, the scandal is hurting your daughter as much as it is hurting me and why not get in the car and go around to others we know have heard it and we will tell them it is not so but is a lie, and he said he would and on, I was to pick him up the next morning. I went down there the next morning and he said he couldn't go because Mrs. Anderson had come and asked him to take a daughter and her to Browning because their baby was sick, and he says, "I can't turn her down," and I said, "that is fair enough I will get you this evening." And on the evening I went down there and there was a car drove in just ahead of me and he come out and said, "I have company I can't go." And on the 14th, I said, "I

(Testimony of Chester Guith.)

will see you in the morning.” And on the 14th I went down there in the morning and he asked me for money and I refused him and he refused to go with me from then on.

Q. Was the purpose to go around and tell the neighbors that it was a lie that you had had anything to do with his daughter?

A. That that statement was a lie. [167]

Q. Now was there any additional approach made to you with reference to money in connection with this case?      A. Yes, sir.

Q. And by whom was that approach made?

A. Mr. Aronow from Shelby.

Q. Mr. Aronow from Shelby, do you know whether or not he is an attorney in Shelby?

A. He is.

Q. Showing you what has been marked for identification by the clerk as Defendant's Exhibit No. 4, consisting of a letter with an envelope attached, I will ask you if you know what that exhibit is?      A. That is right, I do know.

Q. Do you know what it is?      A. Yes.

Q. Will you tell the jury what it is?

A. I got that letter from Mr. Aronow an attorney from Shelby and I went down there.

Q. Now just a minute, did this letter come to you in the regular course of the mail?

A. Yes.

Q. Did you pick it up at your box over in the post office or where?      A. In the post office.

(Testimony of Chester Guith.)

Q. And do you remember about approximately when you [168] picked it up?

A. I can't tell you right offhand.

Q. You could tell by reference to the letter?

A. Yes.

Q. And it came addressed to you?

A. Yes.

Q. You received it?                      A. Yes.

Mr. J. J. O'Connell: We offer it in evidence, your honor.

Mr. M. O'Connell: May I see it?

The Court: Yes.

Mr. M. O'Connell: I will object to the admission of this proposed exhibit, your honor, on the grounds no proper foundation has been laid; it is incompetent, irrelevant and immaterial; if it were admitted it could open the door to considerable hearsay testimony and it is not the best evidence.

The Court: Let me see it.

The Court: Sustain the objection.

Mr. J. J. O'Connell: Now may I ask some additional questions, your honor?

The Court: Not about that; I ruled that out.

Mr. J. J. O'Connell: To lay some additional foundation. [169]

The Court: Well you may attempt to.

Q. (By Mr. J. J. O'Connell): After you received this letter did you go see Mr. Aronow?

A. I did.

Q. And did you talk with him?

(Testimony of Chester Guith.)

A. Personally, yes.

Mr. M. O'Connell: Objected to, your honor; he is covering, he is getting into a conversation with Mr. Aronow which is incompetent, irrelevant and immaterial and there is no proper foundation at this time.

The Court: Sustain the objection.

Q. (By Mr. J. J. O'Connell): Without reference to this letter did Mr. Aronow ask you for any money for the Goberts?

Mr. M. O'Connell: Objected to, your honor; that is hearsay.

The Court: Yes, sustain the objection.

Mr. M. O'Connell: Your honor, I object to this whole line of testimony because apparently we will have no opportunity to examine on cross examination this witness to whom they are referring.

The Court: Yes, sustain your objection; it is ruled out.

Q. (By Mr. J. J. O'Connell): Now did you tell Mr. Aronow that you would not give [170] him any money for the Goberts?      A. Yes.

Mr. M. O'Connell: Objection, your honor.

The Court: Sustain the objection.

Q. (By Mr. J. J. O'Connell): When you and Mr. Aronow met was there any discussion about the amount of property that you had?      A. Yes.

Mr. M. O'Connell: Objected to.

The Court: I will sustain the objection to all this line of testimony.

Mr. J. J. O'Connell: Your honor, we have



(Testimony of Chester Guith.)

great difficulty in connection, I mean as an attorney Mr. Aronow of course can't actually testify about his professional relationship with the Goberts.

The Court: It is apparently not an issue in this case at all.

Mr. J. J. O'Connell: Well, your honor——

The Court: I have ruled; that settles it; turn to something else.

Mr. J. J. O'Connell: Just one more question.

Q. (By Mr. J. J. O'Connell): You heard Mr. Gobert's testimony yesterday that there was no discussion of money with you on October 13th or 14th, was that testimony correct? [171]

A. Would you repeat that again, please?

Q. You heard Mr. Gobert's testimony that there was no discussion with you of money on either the 13th or 14th when you discussed money with him; I mean is his statement correct that there was no discussion of money?

Mr. M. O'Connell: I object to the question, your honor, as being incompetent, irrelevant and immaterial and not tending to prove or disprove any of the issues of this case; it has nothing to do with the crime with which the defendant is charged or with the circumstances surrounding the crime.

The Court: Well the witness yesterday testified in regard to that matter and he said as I recall that there wasn't any discussion of money at all; now this witness may testify as to whether that occurred or it didn't occur or whether there



(Testimony of Chester Guith.)

was a discussion as to money or money settlement or anything of that sort; he may contradict if that is what he intends to do. Answer the question.

Mr. J. J. O'Connell: Read the question.

(Question read.)

A. It is not correct.

Mr. J. J. O'Connell: That is all. [172]

### Cross Examination

Q. (By Mr. M. O'Connell): Mr. Guith, do you feed your cattle every day? A. Yes.

Q. About what time do you feed them?

A. Well it is after breakfast.

Q. And where is the feeding place with reference to your house?

A. Right back of the barn.

Q. Right close to your house?

A. Would you ask that question again, please?

Mr. M. O'Connell: Read the question.

(Question read.)

A. It is right out north of the house.

Q. How far?

A. Oh, anywhere from 150 feet to 300 feet.

Q. What do you feed your cattle?

A. Hay.

Q. Where did you get the hay?

A. Put it up, raise it.

Q. Where do you keep it on the ranch?

A. Behind the barn.

Q. And how far is the barn from the place where you feed them? [173]

(Testimony of Chester Guith.)

A. Well I drag it around to the south side of the barn; the hay corral is attached to the north side or west side of the sheds.

Q. How far is the place to get the hay from the place you put it for the cattle to eat it?

A. That varies.

Q. About how far?

A. Oh, about sometimes 300 feet. Sometimes farther, it all depends on whether the ground where I feed is dirty, I feed on cleaner ground, so it varies.

Q. And how long does this feeding operation take?      A. About an hour.

Q. And the feeding operation consists entirely of moving hay, does it not, from the stack of hay near the barn to the cattle?      A. Yes.

Q. And about what time of the day do you usually feed your cattle?

A. That all depends on what time I get up or have breakfast.

Q. Do you go to town every time your wife does?      A. No.

Q. She quite often drives into town with the children without you, does she?

A. At times. [174]

Q. And when there is snow, more than a foot of snow on the ground it would be quite easy for her to drive into town?      A. No, it isn't.

Q. For what reason?

A. The roads are slick and she won't drive.

Q. If it is thawing?

(Testimony of Chester Guith.)

A. If there is a foot of snow on the ground and it was thawing it would be slick.

Q. Do you recall whether or not the sun was shining on the 9th?

A. I can't recall that, no.

Q. You recall everything else, do you recall whether the snow was shining?

A. If you will remind me of something outstanding, pertaining to the sun, I can probably tell you.

Q. You very often charge batteries for Mr. Go-  
bert?           A. No.

Q. Did you ever charge a battery for him?

A. I have.

Q. How many times?

A. I couldn't tell you right offhand, once or twice.

Q. When?

A. I believe once was in the fall and another time was in, oh, I couldn't say when it was, after I got the [175] battery charger.

Q. The fall of what year?           A. 1953.

Q. Do you remember whether or not there was any ice on the roads on January 9th, 1954?

A. Spots.

Q. So as to make the road slippery?

A. Yes.

Q. Do you recall whether or not it was freezing?

A. It was a very kind of raw day; just right offhand I would say it was freezing.

(Testimony of Chester Guith.)

Q. How long had the snow been on the ground, do you remember?      A. I couldn't.

Q. Do they plow that road you live on?

A. When it gets drifted they do.

Q. Was it drifted at the time?

A. Not deep drifts where we couldn't get through.

Q. How long had it been since you had had a snow, do you remember?

A. Since we had a snow?

Q. Yes.

A. Well there was snow on the ground then.

Q. I mean since you had had a snow, since it had snowed?

A. I can't tell you; I can't recall. [176]

Q. You don't remember.      A. No.

Q. You said you didn't have any sexual intercourse with Eleanor Gobert on the 9th or two weeks after that or three weeks after that, is that right?      A. That is correct.

Q. Did you ever have sexual intercourse with her?

Mr. J. J. O'Connell: Now, your honor, I want to object; this is irrelevant, immaterial and incompetent.

The Court: Yes, I will sustain the objection.

Q. (By Mr. J. J. O'Connell): I will ask you, Mr. Guith, whether or not on the 12th day of October, 1954, you told F.B.I. Agent Gene Fopp that you had sexual intercourse?

A. I didn't.

(Testimony of Chester Guith.)

Q. With Eleanora Gobert? A. I did not.

Q. I ask you now if you deny that you told Special Agent Gene Fopp on October 12th, 1954, that you had sexual intercourse with Eleanora Gobert several times? A. I never told him that.

Q. You are denying it?

A. I am denying it.

Q. Have you ever made any request to have a blood test taken to establish—— [177]

A. Not to my knowledge.

Q. Not to your knowledge?

A. Not to my knowledge.

Q. You would know it if you made a request?

A. If I made the request, I would tell it.

Q. You live only a quarter of a mile from the Gobert ranch, is that right? A. That is right.

Q. And since you found out about this charge I believe it was in October, 1954, is that right?

A. That is right.

Q. You mean you have made no request to submit to a blood test to disprove paternity?

A. I have not.

Q. And has the first offer you have heard to submit to such a blood test been made in this courtroom during the course of this trial?

A. Would you repeat that?

Q. Is the first offer you have ever made to submit to such a blood test been made in this courtroom during the course of this trial?

A. That I have offered?

(Testimony of Chester Guith.)

Q. Is that the first time you have offered to submit to a blood test? A. No. [178]

Q. When did you first offer?

A. Mr. Fopp asked me one time if I would be afraid to take a blood test and I said absolutely not.

Q. When was this?

A. On one of the occasions that he contacted me.

Mr. M. O'Connell: No further cross examination.

#### Redirect Examination

Q. (By Mr. J. J. O'Connell): Now with reference to a blood test did you go see any doctor or doctors in connection with it? A. No.

Q. Did you discuss taking a blood test with Dr. Whetstone?

Mr. M. O'Connell: Objected to as being hearsay.

The Court: Sustain the objection.

Q. (By Mr. J. J. O'Connell): You did tell Mr. Fopp you were not afraid to take a blood test?

A. I told him I wasn't afraid.

Q. Do you remember whether that was on October 12th, 1954, or whether it was on one of the more recent occasions when Mr. Fopp has talked to you?

A. One of the more recent.

Q. When was that, 3 or 4 weeks ago? [179]

A. No, it was before that.

Q. And we make your position now as you previously stated on the stand you are willing to take such a blood test and waive any constitutional right you have in that behalf? A. Absolutely, yes.



(Testimony of Chester Guith.)

Q. Have you been advised how a blood test to establish paternity operates?

A. No, I wouldn't have understood it anyway if I had.

Q. You wouldn't what?

A. I wouldn't have understood it if I had of been.

Q. Have you been advised whether it is conclusive or not in establishing paternity? A. No.

Q. Have you been advised that a blood test might be beneficial inasmuch as it cannot establish the fact that you might be the father of a certain child?

A. Yes, I have been told that.

Q. (By Mr. M. O'Connell): Who told you that?

A. Pardon me.

Q. Who told you that a blood test could not be conclusive in the determination of paternity?

A. Now would you please explain that more thoroughly?

Q. Well Mr. O'Connell just asked you if you had not [180] been advised that a blood test was not conclusive as to determination of paternity and you said you had been advised it was not?

Mr. J. J. O'Connell: I object to the question; that is not a restatement of the question I asked him.

The Court: If it is not a restatement of the question, I will sustain the objection to it.

Mr. J. J. O'Connell: Read the question and answer.

(Testimony of Chester Guith.)

Q. Have you been advised that a blood test might be beneficial inasmuch as it cannot establish the fact that you might be the father of a certain child?

A. Yes, I have been told that.

Q. (By Mr. J. J. O'Connell): Who told you that? A. Dr. Whetstone.

Q. Dr. Whetstone? A. Yes, sir.

Q. Did you go to him with the idea of having a blood test taken? A. Pardon me.

Q. Did you go to him with the idea of having a blood test made? A. No, not right then.

Q. Well I mean why did you go to him about it?

A. To get advice.

Q. Did he tell you that a blood test from the point of view of determining you were not the father of a certain child couldn't be conclusive?

Mr. M. O'Connell: I object to that as leading, hearsay, and leading and suggestive.

The Court: Yes, that is going beyond the scope of that question, and then becomes hearsay.

Mr. J. J. O'Connell: That is all.

Mr. J. J. O'Connell: Call Mr. Armstrong.

### A. E. ARMSTRONG

was called as a witness for defense and having been first duly sworn, testified as follows:

### Direct Examination

Q. (By Mr. J. J. O'Connell): Mr. Armstrong, will you state your name, please?

(Testimony of A. E. Armstrong.)

A. A. E. Armstrong.

Q. And where do you reside?

A. Cut Bank, Montana.

Q. And how long have you resided there?

A. 22 years.

Q. Have you held any official positions with Glacier County, Montana?      A. Yes, sir. [182]

Q. What were those positions?

A. I was County Treasurer four years, County Sheriff twelve years, and I am now the Clerk of the Court.

Q. The Clerk of the District Court?

A. Yes, sir.

Q. And when were you elected Clerk of the District Court?      A. 1952.

Q. And you are still serving your four year term?      A. Yes, sir.

Q. Now have you had an opportunity to know what the—do you know Chester Guith?

A. Yes, sir.

Q. How long have you known him?

A. Ever since I have been in Cut Bank.

Q. And have you had an opportunity to know what his reputation in the community is for truth and veracity?

A. Yes, I have my own opinion about that.

Q. I mean have you discussed with others in the community and heard from others in the community what his reputation is?      A. Yes, I have.

Q. And what would you say that reputation is for truth and veracity?

(Testimony of A. E. Armstrong.)

A. I have never heard anything against the boy myself.

Q. Is it a good reputation? [183]

A. It is above reproach; I would say its never been anything else to me except that.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: No cross examination.

Mr. J. J. O'Connell: Call Mr. Ingram.

### FRED H. INGRAM

was called as a witness for defense and having been first duly sworn testified as follows:

#### Direct Examination

Q. (By Mr. J. J. O'Connell): Will you state your name, please?

A. Fred H. Ingram.

Q. Where do you reside?

A. Cut Bank.

Q. How long have you resided there?

A. Since '26.

Q. And have you held any official positions in Glacier County?      A. Yes, sir.

Q. What were they?

A. Constables and Deputy Sheriffs.

Q. And for how long a period?

A. I am still Constable.

Q. And how long were you a Deputy Sheriff?

A. '45 to '51. [184]

Q. Do you know Chester Guith, the defendant here?      A. I do.

(Testimony of Fred H. Ingram.)

Q. How long have you known him?

A. Since '34.

Q. And do you know what his reputation in the community is for truth and veracity?

A. I have never heard nothing against the man until I come here.

Q. Would you say whether that reputation is good or bad?

A. Well what I have always heard until I hear about this I didn't pay much attention until I was coming up here.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: No cross examination.

Mr. J. J. O'Connell: We rest, your honor.

The Court: We will take a recess for 15 minutes.

(2:25 p.m.)

Court resumed, pursuant to recess, at 2:45 p.m., at which time the jury, defendant and counsel for both parties were present.

The Court: Proceed.

Mr. M. O'Connell: Your honor, in rebuttal I would like to call Mr. Fopp.

The Court: Very well. [185]

### GENE P. FOPP

resumed the stand on rebuttal and testified as follows:

#### Direct Examination

Q. (By Mr. M. O'Connell): Mr. Fopp, when was the first time that you talked to Chester Guith in connection with this case?

(Testimony of Gene P. Fopp.)

A. October 12, 1954.

Q. October 12, 1954? A. Yes, sir.

Q. And where did you talk to him?

A. On the field a short distance from his house, I would say possibly one quarter of a mile near the Gunsight Elevator about a mile off of Highway No. 2 north.

Q. Who was present at that conversation?

A. He and I were just present at the conversation; there were other workmen a short distance from the automobile but I removed him some more personally. I asked him to come and speak to me in confidence and we came to my automobile and I spoke to him there.

Q. What time of the day was it?

A. I started at 11:50 a.m. when I arrived.

Q. How long did you continue to talk?

A. By my notes I concluded it at 12:30.

Q. Could you tell us what that conversation was?

A. Yes. I introduced myself to him and displayed my [186] credentials so he would know who I was and advised him I came to talk with him concerning a serious matter; that the allegation had been made he was the father of a child born by a juvenile girl therefore it would be automatically statutory rape. I advised him that he need not say anything to me at all; that he was entitled to an attorney, and that anything that he did tell me could be used in a court of law against him. I then informed him of the identity of the girl who had the



(Testimony of Gene P. Fopp.)

child and the fact that she had named him as a person having had intercourse with her, the result of which was the child in question born October 2, 1954.

Q. Just a moment now. Was there any, did you notice any physical change in the defendant when you first announced what the nature of the charge was? A. Yes, sir.

Q. What was the change?

A. Well he became quite concerned and blood drained from his face and I suggested he sit down in the car. We continued our conversation either on the side of the car or inside of the car.

Q. And what was that conversation?

Mr. J. J. O'Connell: Now just a minute. I want to object to the general broad character of this question and the danger of incompetent and inadmissible evidence coming in without any opportunity to object and to keep it [187] from the jury and I think the question should be in detail.

Mr. M. O'Connell: Just a moment. I withdraw the last question.

Q. (By Mr. M. O'Connell): Tell me during the course of that conversation did Chester Guith admit or did he not admit having intercourse with Eleanor Gobert? A. He admitted.

Mr. J. J. O'Connell: Now just a minute. Your honor, to which we object on the ground that this actually amounts to confession rather than admission and there has been no proper foundation laid for any admission of a confession.

(Testimony of Gene P. Fopp.)

The Court: Overrule the objection.

A. He admitted having had intercourse with her.

Q. On one or more occasions?

A. On three or four occasions.

Mr. M. O'Connell: You may cross examine.

### Cross Examination

Q. (By Mr. J. J. O'Connell): When was the first time you were called into the case, Mr. Fopp?

A. October 12th I think is when I had a phone call [188] from Dr. King advising me of the birth of the child and that she was a juvenile and therefore he felt there was a violation involving an Indian ward so I drove up to Cut Bank and commenced the investigation.

Q. Did you talk with her?

A. I spoke to her to a limited extent in view of her condition at that time. I wasn't able to get very much information from her, however.

Q. Did she tell you then that Guith was the father of that baby?

A. On the first day?

Q. On the first day?

A. Yes.

Q. What did you mean then when you say you were only able to get limited information?

A. When I first talked to her she said she only had intercourse with Mr. Guith only once and after I talked to Mr. Guith and he admitted three or four times I went back and expressed concern over the fact she had to tell me everything and not only a portion of the story and then she admitted she had intercourse three or four times with the defendant.

(Testimony of Gene P. Fopp.)

Q. Did you ask her about intercourse with anybody else?      A. I did.

Q. Did she deny intercourse with anybody else?  
A. She did.

Q. Name any other boys?

A. She stated she had never gone out with another boy.

Q. Did you ask her why she had not revealed her condition to anybody?      A. I did.

Q. I mean were you impressed as an officer by the fact that she withheld this all this time?

A. Yes, it was very unusual to have fooled everyone, including the doctor.

Q. Now you said there was some physical change that came over Mr. Guith?

A. Just the ordinary expression of concern and blood draining from the face.

Q. Do you know even an innocent person accused of a crime have the same reaction?

A. I would say it would vary but I would say some I am positive would have.

Q. As a matter of fact as an agent of the F.B.I. you talk about offenses with various people who eventually have proven innocent and they have had the blood draining?      A. Yes, sir.

Q. Now you said you advised him he didn't have to talk?      A. Yes, sir.

Q. You told him he had a right to get an attorney? [190]      A. Yes, sir.

Q. And you told him of all his constitutional rights?

(Testimony of Gene P. Fopp.)

A. The Constitution is a voluminous document; I couldn't tell him all of them; I told him exactly what I have told in court, that he was entitled to an attorney, that he need not say anything at all, and that anything he did say could be used in a court of law against him.

Q. Didn't you make any threats?

A. No, sir.

Q. You made no threats at all.

A. No, sir.

Q. You never threatened if he didn't talk to you and come up and tell you about it that it would go hard with him?

A. No, sir. May I qualify that statement. There is a variance. Mr. Guith did ask me how much he would get, if he would get 10 years. I told him I did not know, it was up to the court, it was up to the United States Attorney, that the F.B.I. is purely a fact finding organization. He also asked me to recommend an attorney, at which time I told him I could not recommend any attorney, that it was his own problem to find a suitable attorney, that I might recommend an attorney who later turned out to be not the proper attorney and therefore the fault would be mine.

Q. Now on how many occasions after the 12th of October [191] did you see him?

A. On November 4 and January 20. I think it was November 4. I can refer to my notes.

Q. November 4, 1954?

A. 1954 and January 20, 1955.

(Testimony of Gene P. Fopp.)

Q. Is January 20, 1955, the last time that you saw him?

A. No, I have seen him since then, just visually but I don't believe I have talked to him since January 20, 1955.

Q. You haven't talked with him since then?

A. I don't think so. Not that I can recall.

Q. Did you talk to him after he had retained me as an attorney?

A. Yes, sir. Well, I wish to retract that to some degree. I do not know who he retained as an attorney; I asked him and he refused to tell me; he told me he had an attorney but that was the only information I obtained.

Q. On that occasion did he admit or deny the accusation?

A. He denied all the accusations on that occasion; that was on November 4 I am speaking of now.

Q. November 4, 1954?

A. The second time I talked to him he denied having had intercourse, the third time which was January 20 we discussed it very briefly because all I asked of him was a privilege to take a photograph of the premises which he stated he did not wish to do without consulting his attorney. [192]

Q. So on one occasion your testimony is he admitted it and on another occasion he denied it?

A. Yes, sir.

Mr. J. J. O'Connell: That is all.

The Court: Is that all, Mr. O'Connell?



(Testimony of Gene P. Fopp.)

Mr. J. J. O'Connell: Yes, I said that is all.

The Court: Any further questions?

### Redirect Examination

Q. (By Mr. M. O'Connell): Do you recall the words used by Chester Guith on October 12th during that conversation when he denied any intercourse, or was that November 4th?

A. On November 4th, yes, sir, but to refer to it exactly I would have to look at my notes.

Q. Do you have your notes with you?

A. Yes, sir.

Q. Are they in your own handwriting?

A. Yes, sir.

Q. Will you please refer to them?

Mr. J. J. O'Connell: We object to him using them unless there is also some showing they were made at the time or close to the time.

The Court: You may lay that foundation. [193]

Q. (By Mr. M. O'Connell): Mr. Fopp, those notes you have in your hand when did you make those?

A. I made them shortly after having interviewed him. I interviewed him at 5:30 to 6:15 p.m. on November 4, 1954 and made the notes in my own handwriting shortly after dinner the same day in the hotel room.

Q. And would you tell us the essence of his denial in obtaining those notes?

A. He stated that he wanted to change his story as to what he had told me on the first occasion. I



(Testimony of Gene P. Fopp.)

told him that I couldn't change the story but I would be glad to convey anything else he wanted to add or change in his statement, that I couldn't change the story completely. He then stated that we had been talking about two different things. I have here a note, difference between intercourse and personal contact. He then stated he did not have intercourse with her but monkeyed around with her twice, and that was in April, and he knew it was April because his farm machinery was repaired and ready to go. He said on both occasions she had on boy's jeans with a zipper down the front and that he inserted his penis into the pantsfly. I don't know whether I should——

Q. Will you please go ahead and read?

A. He said he took about four strokes and there was [194] no ejaculation, and that was the essence of my notes here.

Q. That is the statement which was made contrary to the statement received by you from Mr. Guith on October 12, 1954? A. Yes, sir.

Q. And you spoke of the term sexual intercourse on October 12, 1954, with Mr. Guith.

A. Yes, sir, and I asked him if he knew what it meant.

Q. And it was after understanding the meaning of the term, was it after that? A. Yes, sir.

Q. That he told you he had had intercourse with her?

A. Yes, sir. May I explain that the question in the defendant's mind to begin with was that of

(Testimony of Gene P. Fopp.)

paternity not of intercourse, and it took some time for me to convey to him that we were not concerned with the question of paternity, that it was not the feeling between him and the Goberts but that I was representing the F.B.I. in the interests of the people on a criminal charge and we weren't concerned with paternity. It was after that when he realized the question of paternity was not our main interest; it was then that his attitude changed and, in fact, I asked if he wished to give a signed statement at that time and then he said, "No."

Mr. M. O'Connell: You may cross examine. [195]

### Recross Examination

Q. (By Mr. J. J. O'Connell): Now you went through, Gene, and repeated words there, were those Guith's words or were those the words you would put them down as you recalled?

A. Guith's words?

Q. Were those Chester Guith's words or were those words you would put down as you recalled?

A. Mr. O'Connell, in view of the argumentative nature of the interview with the defendant on November 4 I was very particular to make sure I put his words in quotes which was "monkeyed around". And also the words——

Q. I mean did you write them down right there?

A. Not right there.

Q. Well when?

A. I would say possibly within an hour and a half.

(Testimony of Gene P. Fopp.)

Q. An hour and a half after you got back to Cut Bank?

A. Yes. Well at 6:15 I concluded the interview. I went into Cut Bank and went to the hotel.

Q. Did you show Mr. Guith this statement with these words? A. No, sir.

Q. He never had an opportunity to see them?

A. No, sir. [196]

Q. Or an opportunity to admit or deny them?

A. No, sir.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: Nothing further.

Mr. M. O'Connell: I would like to call Mrs. Gobert.

### MRS. ROSELLE GOBERT

was called as a witness on plaintiff's rebuttal and testified as follows:

#### Direct Examination

Q. (By Mr. M. O'Connell): Would you tell us your name, please?

A. Mrs. Roselle Gobert.

Q. Where do you live?

A. I live on Seville Flats about 10 miles west of Cut Bank.

Q. And is that on the Blackfeet Reservation?

A. Yes.

Q. What is your husband's name?

A. Edward M. Gobert No. 2.

Q. Are any children living at home with you now? A. There are three.

(Testimony of Mrs. Roselle Gobert.)

Q. How many children do you have altogether?

A. Nine. [197]

Q. And is Eleanora Gobert a daughter of yours?

A. Yes.

Q. And how long has she lived in the house there with you?

A. All her life.

Q. Have you been in position as her mother to observe her social activities with boys?

A. Yes. You mean if I know that she has social activities with boys?

Q. Yes.

A. Well if she did I would be in position to know, I mean if she went out with boys or anything like that I would be in position to know.

Q. Does Eleanora go out with boys?

A. No, not to my knowledge.

Q. And where does she go after school, do you know?

A. She comes straight home on the bus.

Q. Does she go out evenings?

A. No.

Q. Does she go out on weekends?

A. No.

Q. Does she ever go out and stay overnight?

A. No.

Q. How often does she go to town?

A. Well sometimes Saturday afternoon when she is home [198] from school.

Q. And who does she go to town with?

A. With me and her father.

Q. And what time does she come home?

A. Well it depends, sometimes we get through shopping early and we come straight home, if the

(Testimony of Mrs. Roselle Gobert.)

weather is cold we come straight home, if not usually we go to my sister to visit sometimes and we don't get home until quite late and she is with us all the time.

Q. And when you say she is with us who do you mean by us?      A. Me and her father.

Mr. M. O'Connell: You may cross examine.

### Cross Examination

Q. (By Mr. J. J. O'Connell): Now as I understand it, Mrs. Gobert, you want to testify that your daughter the only time she has gone out was with you and your husband?      A. Yes.

Q. Never been out on any other occasion?

A. You mean—how do you mean on any other occasion?

Q. Well I mean for instance to go into town to the theater or to go out with the kids? [199]

A. Well whenever she goes to a theater we usually stop at my sister's like I said and her dad takes her to the show and goes back after her, and sometimes she walks back home with her cousins, her cousin Karen Brown and her sister and Eleanora's brother.

Q. How long a period has this gone on?

A. Occasionally.

Q. Well I mean how long a period has this close supervision of her by you and your husband gone on?

A. Well this supervision has gone on in our family with all our girls until they are of age.



(Testimony of Mrs. Roselle Gobert.)

Q. Until they are of age?

A. Yes, we raised six girls.

Q. And you never let them go out with the boys until they get what? A. Of age.

Q. What do you consider of age?

A. Eighteen.

Q. And up to that time you never let them go out by themselves? A. No.

Q. And if she goes to town, she goes with you and your husband? A. Yes.

Q. You have been with her when she has gone up to the [200] Cruse's cabin?

A. She never has gone to Cruse cabin.

Q. Never gone? A. No.

Q. You heard your husband testify?

A. That is her sister, oldest sister, Roselle, the same name as mine; and she did go with the Cruse's daughter and they were with Janis' parents, Mr. and Mrs. Cruse.

Q. And Eleanora didn't go? A. No.

Q. Did I get the impression from some of your testimony the times she was out with Karen Brown when you were not there?

A. No, I said she walked home from the show with her sometimes but she wasn't out with her.

Q. Is Karen Brown the girl who talked to her about sexual intercourse and what it was and so on?

A. Not to my knowledge; I didn't know Karen Brown talked to her about sexual intercourse.

Q. Were you present in the courtroom when Eleanora testified?



(Testimony of Mrs. Roselle Gobert.)

A. Yes, but I never heard Karen talk about it.

Q. You didn't hear it?

A. No, but I heard it yesterday when she mentioned it here on the stand. [201]

Q. I mean have you ever had any parties at your house?

A. Parties at my house; how do you mean?

Q. I mean have you for the children, for the girls, for your family? A. No.

Q. Birthday parties or social parties of any kind? A. No.

Q. Have any children gone with boys or girls to plays or to visit or anything of that kind?

A. Well the neighbor children, that is the neighbors, a little boy comes from Watson's, the next farm east of us; he is about 8 years old.

Q. And he is the only one?

A. And my brother's two children, two little girls, one 4 and one 6.

Q. Do you remember Eleanora riding a bicycle?

A. Yes.

Q. Do you remember her going off riding on the bicycle with another boy at night? A. No.

Q. You don't recall any occasion? A. No.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: No further examination.

Mr. M. O'Connell: The United States rests, your honor. [202]

Mr. J. J. O'Connell: If it please the court, I would like to call Mr. Guith in sur-rebuttal.

The Court: Very well.

## CHESTER GUTH

resumed the stand and testified as follows:

## Direct Examination

Q. (By Mr. J. J. O'Connell): You are the same Chester Guith who testified previously and you were previously sworn? A. Yes.

Q. You were present when Mr. Fopp testified just a few minutes ago? A. I was.

Q. Did you hear his statement that when he talked with you on October 12th, 1954, that you admitted having sexual intercourse with Eleanor Gobert? A. I heard that statement.

Q. Is that statement true or false?

A. That is very false.

Q. Did you admit to him that you had sexual intercourse with her not only on one occasion but three or four occasions?

A. I never said no such a thing.

Q. Now did Mr. Fopp on the occasion that he took you into the car on October 12, 1954, and as he said advised you [203] what all your rights were and right to have an attorney and so on, did he make any threats?

A. Well he says to start with you can talk if you want to or you don't have to. I said, "What if I don't say anything?" And he said, "If you do not, we will have a warrant sworn out for you and we will get you in and you will talk."

Q. That is what he says? A. Yes.

Q. Now you heard his testimony that—was that the first time you had ever been contacted by a law

(Testimony of Chester Guith.)

enforcement officer?           A. That is right.

Q. Was that your first experience with somebody coming from the Government accusing you of a crime?           A. Yes.

Q. You have never been previously arrested for any offense?           A. I haven't.

Q. Now you heard his statement that you asked him about the number of years you could get for this crime?

A. I never asked him that.

Q. Were you frightened? Did you get scared when he accused you of this?

A. Absolutely I was very surprised with the charge. [204]

Q. Now on November 4th, 1954, Mr. Fopp saw you again, is that correct, you heard his testimony to that effect?           A. Yes.

Q. At that time you denied the accusations that were made against you, is that correct?

A. I did.

Q. Now you heard him read from a report which he had made and in which he said he was reviewing your words, he had put them in quotes, that you wanted to change your story, then you then stated you had no sexual intercourse but that you monkeyed around with her, did you make any statement of that kind?

A. I never made that statement; I never had anything to change.

Q. He also says you went on to say you inserted your penis into her pantsfly, took about four strokes

(Testimony of Chester Guith.)

but there was no ejaculation, did you ever use the word ejaculation?      A. No.

Q. Do you know what the word "ejaculation" means?      A. Well, yes, I believe I do.

Q. I mean is that the term you usually use for what that means?      A. No.

Q. Now you heard Mrs. Gobert's testimony? But let me ask you did you insert your penis into the pantsfly of [205] Eleanora Gobert?      A. No.

Q. Or did you take any four strokes?

A. I never.

Q. Now you heard Mrs. Gobert's testimony that Eleanora had never gone out with any boys?

A. Yes.

Q. Have you had occasion to see Eleanora out with boys?      A. I have.

Q. When?      A. It was in the fall of '43.

Q. '43?      A. It was.

Q. '43?      A. Or, excuse me, '53.

Q. '53, and was she alone with a boy?

A. Yes.

Q. What were they doing?

A. They were about three-fourths of a mile or approximately that east of the Gobert ranch, about 11:30 at night, and they were riding, each one had a bicycle riding toward home.

Q. Was anybody with them? Was Mrs. Gobert or Mr. Gobert?      A. No. [206]

Q. They were by themselves?

A. They were by themselves.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: No cross examination.

Mr. J. J. O'Connell: That is all.

The Court: Do you have any special instructions on the case?

Mr. J. J. O'Connell: Your honor, I have.

The Court: Has the United States Attorney any?

Mr. M. O'Connell: No special instructions, your honor.

Mr. J. J. O'Connell: I just have four, your honor. If we could have a short recess?

The Court: Yes, we will take a short recess. You both better come into Chambers, I want to talk with you a minute. (3:15 p.m.)

Court resumed, pursuant to recess, at 3:30 p.m. at which time the jury, defendant and counsel for the parties were present.

The Court: Ladies and gentlemen of the jury, I have decided to give you a little rest from further consideration of the case until tomorrow morning at nine o'clock. We will start at nine so we will be sure and get a good start, so you will have ample time to consider the evidence after you retire to the jury room. And you know the admonition of the [207] court not to talk to anybody about the case or allow anybody to talk to you about it or discuss it among yourselves or form or express any opinion as to the guilt or innocence of the defendant until the case is finally submitted and return here tomorrow morning at nine o'clock. Court is adjourned until tomorrow morning at nine o'clock. (3:40 p.m. June 10, 1955.)



Court resumed, pursuant to adjournment, at 9:00 o'clock a.m. on June 11, 1955, at which time the jury, the defendant and all counsel for both parties were present.

The Court: Well, gentlemen, I believe the next order of business here is the arguments.

Mr. J. J. O'Connell: Your honor, if the court would forgive me, yesterday afternoon I forgot to make a couple motions which I would like to have made and I wonder if the court would give me permission and leave to do so at this time, one motion under the rules to be made in the presence of the jury and one motion without the presence of the jury. Its to preserve them for the record.

The Court: Have you consulted with counsel for the Government about it?

Mr. J. J. O'Connell: No, I haven't, your honor.

The Court: Do you know what it is about?

Mr. M. O'Connell: No, your honor, I have no idea. [208]

The Court: Well you are out of order.

Mr. J. J. O'Connell: They are motions largely to preserve the record, your honor.

The Court: The same motions you have made before?

Mr. J. J. O'Connell: One is the same motion I made before.

The Court: And what is the other about?

Mr. J. J. O'Connell: The one is to strike the testimony of the witness Fopp with reference to confession.



The Court: All right, you can make your motions, go ahead.

Mr. J. J. O'Connell: Your honor, at this time comes the defendant and moves to strike the testimony of the witness Fopp with reference to statements made to him by the defendant Guith in the course of his conversation with respect to his involvement in this, the crime alleged in the indictment on the grounds such statements would constitute a confession and there was no proper foundation laid for the admission of such a confession, and, further, in view of the testimony of the defendant Guith that threat was made to him of prosecution.

The Court: Don't prolong it and make a speech to the jury, end your motion.

Mr. J. J. O'Connell: That is the motion, your honor. [209]

The Court: The motion is denied.

The Court: Now the next motion is to be made without the presence of the jury.

Mr. J. J. O'Connell: Yes.

The Court: All right, the jury may retire for a few moments to the corridor until this motion is made.

Whereupon the jury retired from the courtroom.

Mr. J. J. O'Connell: Comes now the defendant, your honor, and moves the court for a judgment of acquittal for each of the following reasons: 1. That the Government has failed to prove that the Guith ranch on which the crime was alleged to be committed is not Indian Country as alleged in the

indictment, and on this argument our evidence is further bolstered by the testimony of Mr. Guith that the land was deeded to him and it was purchased on tax deed from Glacier County and it was not within Indian Country so that the Government has failed to prove the crime charged, that there has been no proof of penetration of the female sexual organ of the prosecutrix, and further bolstered by the testimony of Mr. Guith.

The Court: The motion is denied. Call in the jury.

The Court: You may proceed.

Whereupon the jury returned to the jury box in the courtroom.

The Court: Mr. District Attorney, you may proceed with [210] your argument.

Whereupon Mr. M. O'Connell made the opening argument to the jury.

The Court: Mr. O'Connell.

Whereupon Mr. J. J. O'Connell made the argument in behalf of the defendant to the jury.

The Court: We will take a recess for 15 minutes. (10:30 a.m.)

Court resumed, pursuant to recess, at 10:45 o'clock a.m., at which time the jury, the defendant and the counsel for the parties were present.

The Court: Proceed, Mr. District Attorney.

Whereupon Mr. J. O'Connell made the closing argument to the jury.

The Court: Ladies and gentlemen of the jury, in looking into your faces I see no disappointment

indicated there that we are nearing the conclusion of this sordid case.

Notwithstanding the nature of the case I have been impressed with your courage and fortitude and your interest manifested throughout this trial in what has been said and done. As you looked at the witnesses and then by your expressions you have shown that you are good citizens, that you will make good jurors and good officers of this court such as you really are, being sworn as jurors to well and truly try the issues in this case and a true verdict find. [211]

In all of these criminal cases after the evidence is concluded it then becomes the duty of the court after the arguments of counsel by these gentlemen here, who are also officers of the court on both sides, it then becomes the duty of the court to advise you as to the rules of law that apply for reference to a case of this kind. And that is done, of course, to the better enable you to reach a verdict after you have retired to your jury room and have deliberated on the case.

You, as you know, are the sole judges of the facts in the case. You are clothed with great authority, perhaps greater authority than the Judge or any other officer of the court. Greater confidence is placed in you by the law of the land. You are serving under a system that has been in vogue for about 600 years, and thus far it has appeared to be the best system we know of of handling the facts in both civil and criminal cases in courts of justice.

As I said, you are the sole judges, you judge the

credibility of the witnesses that you see and hear on the witness stand. You judge of the weight to be given testimony. You judge of all the circumstances that you see and observe through the trial of a cause, so that after you retire and deliberate you will be able to form your judgment as to what you should do in the case, whether you believe the defendant has been proved guilty beyond a [212] reasonable doubt.

Now in this case the Grand Jury has found an indictment against the defendant Chester Guith, charging him with the crime of rape.

I believe this indictment has already been read to you twice but I am going to read it again so you will have the contents in mind while I pursue other things in reference to the instructions to be given you.

“That on or about the 9th day of January, 1954, at the Guith ranch, approximately ten miles west of the city of Cut Bank, and at a place within the exterior boundaries of the Blackfeet Indian Reservation, being Indian Country, and within the State and District of Montana, the defendant, Chester Guith, did willfully, unlawfully, and feloniously have sexual intercourse with one Eleanora Gobert, a female Indian person of the age of fifteen (15) years and not at said time the wife of said defendant.”

Now before I overlook it it has been stated here by counsel that proof has not been submitted that this is within the Indian Country. And I want to disabuse your minds of that situation right at this

time. When you started there was testimony in this case that the Guith ranch is within the exterior boundaries of the Blackfeet Indian Reservation, and that is sufficient, so I need not give that question further consideration. [213]

Now the law, I should call your attention, of course, to the law upon which this information is based. I am reading from Section 1152 of the United States Code Annotated, Title 18:

“Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.”

And from Section 1151:

“Indian country defined. Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country,” as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, \* \* \* .”

Now the federal statute upon which this indictment rests is found in Section 2032 of Title 18 United States Codes Annotated, and it reads, as follows:

“Whoever, within the special maritime and territorial jurisdiction of the United States, carnally knows any female, not his wife, who has not attained the age of sixteen years, shall, for a first



offense, be imprisoned not more than fifteen years, and for a subsequent [214] offense, be imprisoned not more than thirty years.”

Within the territorial jurisdiction of the United States, and that requires some definition and that is found in Title 18, United States Codes Annotated, Section 7, subdivision (3) which illustrates the meaning of that, what I have just read to you. Subdivision (3):

“Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.”

You will note then that would be any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, which fits this case precisely.

Now, ladies and gentlemen, in respect to this indictment, you, under the charges contained here you have the power and authority as you find the evidence to be to find this defendant guilty or not guilty, but you will remember that this indictment in itself is not to be considered by you any evidence whatsoever against the defendant.

This is merely a written form handed down [215] by the Grand Jury for the purpose of acquainting us with the nature of this charge so that we will know what it is about, all we who are interested here, the jury and the officers of the court; it is



merely for that purpose, and the defendant, of course, acquainting him with the knowledge of it.

Now the defendant has entered a plea of not guilty under this charge and under that plea arises what in law we term the presumption of innocence, which means that the defendant is presumed to be innocent until he is proved guilty beyond a reasonable doubt. And this presumption is to remain fixed in your minds from the beginning to the end of the trial so that when you come to your final conclusion you will then be able to determine whether notwithstanding the presumption of innocence you believe the defendant has been proved guilty beyond a reasonable doubt if you so believe.

Now then, ladies and gentlemen, you were selected to sit in the trial of this cause because you appeared to be fair, you appeared to have no knowledge whatsoever of the case, you had no acquaintance with anybody connected with this trial, lawyers on either side, except Mr. Shell, one of the jurors, who said he was acquainted with defendant's counsel but that that would make no difference, that he could hear the evidence fairly and [216] decide the issues here, or words to that effect.

So that it appears that you had no bias or prejudice one way or the other, and you had no opinion whatsoever as to the guilt or innocence of this defendant and that is the proper state of mind for jurors to be in when they enter upon the trial of a cause.

Now I spoke of reasonable doubt. You have often heard that phrase. It is the popular phrase in the

lawbooks and mentioned in all the criminal cases and some of the definitions that are given are rather long and complicated and full of legal verbage and I wonder that the jurors could understand just exactly what the meaning is. I have heard such definitions given in instructions. But really the phrase itself almost affords you a complete definition, a reasonable doubt, a doubt for which you can find a reason, a good reason, a substantial reason based upon the evidence, the character of the evidence or the lack of evidence.

If after you have considered all of the evidence in this case, that which is favorable as well as that which is unfavorable you feel that you have an abiding conviction to a moral certainty of the truth of the charge, then you are said to have no reasonable doubt, and it would be your duty to convict the defendant.

On the other hand, after so considering [217] all of the evidence in the case, that which is favorable as well as that which is unfavorable, you feel that you have not an abiding conviction to a moral certainty of the truth of the charge, then it would be equally your duty to acquit the defendant.

Now you understand the force and effect of that language I have used on that definition, an abiding conviction to a moral certainty. We might substitute other words, an abiding, continuing, a belief, a sincere belief to a very high degree of credibility that the case is so, that the case has been established to your satisfaction beyond a reasonable doubt.

Of course, it would be impossible to prove one of these cases to a mathematical certainty of such certainty as required in the sciences and the law does not so require but that you should satisfy it beyond a reasonable doubt.

Now, as I said before, you are the sole judges of the facts in the case, the weight to be given testimony, the weight to be given circumstances, credibility of witnesses. You have an opportunity to see the witness upon the stand. You will note the witness' manner of testifying; you note whether the witness is frank, candid and outspoken or whether the witness is evasive or speaks in monosyllables or has a poor memory about some important [218] matters about which the witness is questioned. You know what interests or relationship exists on the part of the witness so testifying and you give particular attention to that if some interest or bias or prejudice or relationship is shown there.

You know, the office of the witness in the courtroom is to speak the truth and nothing but the truth, and the presumption is that witnesses do speak the truth, but that presumption may be repelled by the witness' manner of testifying, by contradictory evidence, by the character of the evidence and all those things you are to take into consideration, to weigh and consider and deliberate and discuss among yourselves when you retire.

If you believe that any witness has wilfully testified falsely to a material fact in the case, you have a right to disregard that testimony altogether, or you may find upon comparison of that witness'

testimony with some other witness who has testified in the case that there are points of corroboration and you may decide after you have considered it all and refreshed it in your minds and in your discussions that you can accept a part of that witness' testimony that you have some disbelief about so that you may, as you conclude, decide to accept it in part and reject it in part, but all that is left to your judgment after thoroughly considering it.

Now there is another point at issue here and that is the question of intent; if you believe beyond a reasonable doubt that the defendant committed the crime as charged in the indictment, what was the intent.

In addition to that the jury must find that the defendant acted, if he acted at all, with a criminal, that is to say, with an evil intent. And in order to discover what that intent is you must have resort to all of the circumstances in the case, to all of the evidence that has been presented here and then determine what you consider the intent to have been, if you believe he acted in accordance with the charge contained in the indictment.

Now then there are several instructions aside from the various instructions I have given you that should be taken into account in this case.

For instance, as to the crime of rape itself. You are instructed that any act of sexual intercourse accomplished with a female not the wife of the perpetrator and under the age of 16 years is rape, and it is immaterial whether the female under the age of 16 years consented or did not consent to such



act. Any sexual penetration however slight is sufficient to complete the offense.

The essential guilt of rape consists of the [220] outrage to the person and feelings of the female involved, therefore, any sexual penetration however slight is sufficient to complete the crime if the other requisite facts are present. Proof of emission is not necessary.

A charge such as that made against the defendant in this case is one that is easily made and once made difficult to disprove even if the defendant is innocent. From the nature of a case such as this the complaining witness and the defendant usually are the only witnesses, therefore, I charge you that the law requires that you examine the testimony of the prosecuting witness with caution.

Although evidence was offered for the purpose of showing that on more than one occasion acts of sexual intercourse were indulged in and improper familiarity existed between the defendant and the prosecutrix, you are not permitted to deliver a verdict of guilty in this case unless you find that the defendant committed the specific offense which the prosecution alleges was committed in the indictment on January 9th, 1954, at the Guith ranch.

The defendant is here on trial for only that offense which is charged in the indictment and upon which the Government has elected to rely.

But you may not arbitrarily and capriciously disregard testimony of a witness who is not impeached in [221] any of the usual modes known to the law, but whose testimony is reasonable and consistent

with all the circumstances proved bearing upon the material issues involved in this case. The usual modes of impeachment of a witness known to the law as mentioned in the preceding instructions are: 1. By proving contradictory statements previously made by the witness as to matters relevant to his testimony in the case. 2. By disproving facts testified to by him. 3. And by evidence as to his general bad character. But whether a witness has been impeached is solely for the jury to determine from all the evidence in the case.

The direct evidence of one witness who is entitled to full credit is sufficient proof of any fact in this case. A witness entitled to full credit is one whose statements upon the witness stand are within reason and believable.

Now as to the testimony of the defendant as a witness in the case. The defendant in a criminal case may be sworn and may testify in his own behalf. In such a case the jury in judging of the credibility and weight to be given his testimony may take into consideration the fact that he is the defendant, and the nature and seriousness of the crime of which he is accused, and what it would mean to him if he were to be convicted.

You have no right, however, to disregard [222] the testimony of the defendant on the ground alone that he is the defendant and stands charged with the commission of a crime. You should fairly and impartially consider his testimony together with all of the other evidence in the case, and if upon all the evidence you have a reasonable doubt as to his



guilt of the crime charged in the indictment herein, it is your duty to acquit him.

Now evidence as you recall has been introduced in the case relating to the reputation of the defendant for truth and veracity. Now on that subject witnesses have testified to the good reputation of the defendant; good reputation always goes to one's credit if it has been established to your satisfaction, you being the sole judges of the facts, but good reputation alone, if you believe the testimony of the witnesses, will not override the case made out against the defendant beyond a reasonable doubt. You should consider the testimony in regard to good reputation in connection with all the other evidence in the case, and then weigh it carefully, all of it, and determine whether you believe the Government has sustained the burden of proof and made out a case against the defendant beyond a reasonable doubt.

The defense of alibi appears in the case and here is an instruction in regard to how you should consider an alibi. [223]

The jury are instructed that one of the defenses made by the defendant Chester Guith in this case is what is known as an alibi; that is, that the defendant was in another place at the time of the commission of the crime. This is a proper defense, if proved, and if in view of all of the evidence of the case the jury have a reasonable doubt as to the presence of the defendant at the time and place where the crime is alleged to have been committed,

they should give the defendant the benefit of the doubt and find him not guilty.

As you have noted, this is a felony case, all 12 of your number must agree in order to find a verdict and your verdict must be unanimous, and each juror should decide for himself and herself upon the evidence in the case and upon the law as given you by the court as to what his verdict will be. No juror should yield his deliberate conscientious conviction as to the guilt or innocence of the defendant either at the instance of the majority of the jury or for the sake of unanimity or to prevent a mistrial but hold to it, and you are further instructed that nothing in this instruction is to be taken to mean that you shall not fully and fairly discuss among yourselves all the evidence and the facts surrounding the case as disclosed by the evidence, or that any of your members shall not be open to conviction by honest argument by any member [224] or members of the jury founded upon the evidence produced upon the trial or upon the law as given you by the court.

Now in reference to statements that have occurred here, statements made by one and testified to by another. Claimed oral statements testified to by witnesses during the trial belong to a class of evidence to be considered and weighed by the jury with caution.

It sometimes happens that a witness testifying to an oral statement made by a person might use a word or phrase conveying a meaning or impression not intended by the person making such oral

statement, or the latter may have used a word or phrase unintentionally conveying a meaning he did not intend so mistakes and misunderstanding may occur which the jury should consider with great care. But on the other hand when such oral statements are testified to by intelligent and credible witnesses they may be entitled to great weight and the jury as in all issues of fact are the sole judges of the weight to be given such oral statements and the credibility of the witnesses so testifying.

Now in this case you have noted certain witnesses testified known in the law as an expert witness. A witness testified in this case known in the law as an expert because of his special knowledge in certain lines of endeavor acquired by long study and experience, and in [225] this particular case I am referring to medical science, the testimony of Dr. King.

The testimony of expert witnesses is to be considered and weighed just the same as that of other witnesses in the case and there is no rule which requires you to give it a higher standing in this cause than the testimony of other intelligent and credible witnesses who testified to material facts in the case. The testimony of experts like that of other witnesses who have appeared in the case should be given such weight in your judgment as you believe it ought properly to receive.

Now your power of judging. You are instructed that your power of judging the effect of evidence is not arbitrary but is to be exercised with legal discretion and in subordination to the rules of evi-

dence. You are not bound to decide in conformity with the declaration of any number of witnesses which does not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds.

That a witness false in one part of his testimony is to be distrusted in others. That evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict, [226] and, therefore, if the weaker and less satisfactory evidence is offered with the appearance that stronger and more satisfactory evidence is within the power of the party, the evidence offered should be viewed with caution by you.

As I have heretofore said, you are the sole judges of the effect, value and weight of the evidence in this case, and of credibility of witnesses. It is solely and exclusively your duty to determine the facts and this you must do from the evidence presented to you and apply the law as given you in these instructions to the facts as you find them.

Every witness who has testified in this case is presumed to have spoken the truth; this presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony or by contradictory evidence.

In determining the credibility of any witness you are to take into account in weighing his testimony his interest or want of interest in the result of the case, his appearance upon the witness stand, his manner of testifying, his apparent candor or want



of candor, his apparent intelligence or lack of intelligence, his means of knowledge as to any facts about which he testified, his apparent fairness or lack of fairness, [227] and whether he is supported or contradicted by the facts and circumstances in the case as shown by the evidence.

In determining what are the facts in this case you are not bound to decide in conformity with the statements of any number of witnesses producing conviction in your minds against a less number or against other evidence satisfying your minds, or against a presumption created by law.

Now you will not be influenced by colloquies or disputes during the trial between counsel or between counsel and the court, or between the court, or counsel and the witnesses, or remarks or statements not based upon the evidence.

You will base your verdict solely upon the evidence submitted to you and wholly disregard remarks of counsel not based upon the evidence, and wholly disregard anything you may have heard or read outside of the evidence and any evidence erroneously admitted and afterwards excluded you will also disregard.

And I find one instruction left here in regard to intent and I will read it to you again. Now in every crime or public offense there must be found to exist a joint operation of act and intent.

Of course, you can't look into the mind of the defendant and determine with what intent he [228] committed the act, if you find he committed it, but you may have recalled circumstances and all the

evidence produced here on the trial, bearing in mind that a sane person is presumed to intend the natural and usual consequences of his own deliberate act; that you must be satisfied from all the evidence beyond a reasonable doubt that he acted, if he acted at all, with criminal, that is to say, with evil intent before you convict the defendant.

Now, of course, in this case you are bound to find conflicts in the evidence and you just wonder sometimes and study and you will undoubtedly have considerable discussion when you retire to the jury room as to these conflicts in the evidence. Well at the end of it you may find that some of the conflicts you have discussed among yourselves are irreconcilable; if you find that such a state exists after your discussions and arguments, then you must accept such evidence as you believe, after consideration and discussion, is most worthy of your belief, and then give it such weight as you think it ought properly to receive, all being left to your judgment, you being the sole judges of the facts of the case.

Now it takes twelve of your number to agree on a verdict. You will select one of your number [229] to act as foreman and he or she will sign the verdict after you have agreed. You will be given the information to consider and the exhibits in the case. I believe there is only one or two exhibits but whatever there are they will be given to you to examine in the jury room, and also copies of the verdicts so that you can determine which one you are to use.

The Court: Have the bailiffs been sworn?



Mr. J. J. O'Connell: Your honor, if the court please, I want to make just a couple of exceptions.

The Court: You wait a minute. Sit down there until I get through.

The Court: Swear the bailiffs.

Whereupon the bailiffs were duly sworn.

The Court: Now you gentlemen on both sides may come over here to this desk and sit down and in the presence of the jury note your exceptions but not within the hearing of the jury; it is to be done quietly and in an undertone.

Mr. J. J. O'Connell: Comes now the defendant and excepts to that instruction of the court instructing the jury that the Guith ranch is within Indian country and the jury should not consider this point on the grounds that the evidence clearly shows the Guith ranch is not in Indian country and not subject to the jurisdiction of the United States, and on the further ground that the [230] instruction invades the province of the jury.

Comes now the defendant and excepts to that instruction of the court dealing with Section 7, subdivision 3, of the United States Codes Annotated concerning the territorial jurisdiction of the United States, and particularly excepts to that part of the instruction which holds that this section applies to the case at bar on the grounds that the Guith ranch where the alleged offense was alleged to be committed is not within the territorial jurisdiction of the United States, and on the further ground that the United States has reserved no right of jurisdiction in said Guith ranch, and that the evi-

dence clearly shows that said Guith ranch is owned by the defendant by virtue of a deed granted by Glacier County, Montana.

Mr. J. J. O'Connell: That is all.

Mr. M. O'Connell: No exceptions.

The Court: You are through dictating your exceptions, are you, on both sides?

Mr. J. J. O'Connell: Yes, your honor.

Mr. M. O'Connell: Yes, your honor.

The Court: Very well, the jury may retire and deliberate on its verdict. It is so nearly noon you better take them to lunch. Perhaps you better take them to their jury room first and then at twelve o'clock or [231] shortly after you can take them to lunch. (11.50 a.m. June 11, 1955.)

Court resumed to receive the verdict of the jury at 5:15 p.m. on June 11, 1955, at which time the jury, the defendant and counsel for both sides were present.

The Court: Ladies and gentlemen, have you reached a verdict?

Foreman: We have, your honor.

The Court: Very well, let's have the verdict.

Whereupon the bailiff delivered the verdict from the foreman to the Judge.

The Court: Very well, read and record the verdict.

The Clerk: Your verdict, ladies and gentlemen of the jury:

"Verdict: United States District Court, District of Montana, Great Falls Division. No. 8503.

United States of America, Plaintiff, vs. Chester Guith, Defendant.

We, the jury in the above-entitled cause, find the defendant guilty in manner and form as charged in the [232] indictment on file herein.

R. L. Adolphson,  
Foreman.

We recommend leniency."

The Clerk: Is that your verdict as read so say you all?

The Court: Do you desire to have the jury polled?

Mr. J. J. O'Connell: Yes, may we, your honor?

Whereupon the clerk duly polled the jurors.

The Clerk: All have answered in the affirmative.

The Court: Very well, the defendant may stand up.

Mr. J. J. O'Connell: Your honor, if I might at this time ask to have a bond set and have a presentence investigation?

The Court: No, that will mean a stay and we have a rule against any stay of sentence here. Now is the time and I have thought about it and thought over it. I will say to the defendant he was indicted by the Grand Jury and charged with rape and subsequently brought into court and arraigned and pleaded not guilty to this charge and was tried by the jury and the jury found him guilty as charged in the indictment. Now have you anything to say or your counsel why sentence of the court should not be pronounced in accordance with the verdict of the jury.

Mr. J. J. O'Connell: Your honor, at this time I wonder [233] if I might say a few words in behalf of the defendant?

The Court: Yes, you may.

Whereupon counsel made a statement in behalf of the defendant.

The Court: The court is perfectly willing to recognize this recommendation for leniency. And under the circumstances is there anything further? Has the defendant anything he wants to say in his own behalf.

Defendant Guith: I still am not guilty; whether I am charged with being guilty or not I am not guilty.

The Court: Well the jury have found you guilty and it is the duty of the court to recognize that verdict and be governed accordingly, but I am going to take into consideration their recommendation for leniency. It is the judgment of the court and sentence of the court that the defendant be remanded to the custody of the Attorney General of the United States or his legally authorized representative to be confined in a penitentiary, or in an institution of the penitentiary type for the period of six years. That is all.

Whereupon court was adjourned at 5:25 p.m. on June 11, 1955.

[Endorsed]: Filed July 12, 1955.

[Endorsed]: No. 14848. United States Court of Appeals for the Ninth Circuit. Chester Guith, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana, Great Falls Division.

Filed: July 29, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 14848

CHESTER GUITH, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

### STATEMENT OF POINTS

The appellant in the above entitled cause, through his counsel of record, hereby adopts for his statement of points upon which he intends to rely upon this appeal, the Statement of Points to be relied upon on appeal, heretofore and on the 28th day of June, 1955, filed with the Clerk of the United States District Court for the District of Montana, Great Falls Division, and served upon counsel for the appellee, and certified by the said District Court

Clerk to the Clerk of the United States Court of Appeals for the Ninth Circuit, and hereby respectfully requests that said Statement of Points be allowed and filed pursuant to Rule 19 of this Court.

Dated this 12th day of September, 1955.

CHESTER GUITH,

Appellant,

/s/ By JERRY J. O'CONNELL,

Counsel of Record for the  
Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 14, 1955. Paul P. O'Brien, Clerk.